REMONSTRANCE

UN-LAWFULNESSE

Of the Warre undertaken by the pretended PARLIAMENT of ENGLAND, against their SOVERAIGN;

And of the

IN-IUSTICE

Of the Alteration of the Ancient Gouvernment and fundamentall Lawes of the Kingdome.

AT PARIS 1652.

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TO HIS
MOST EXCELLENT
MAIESTIE
CHARLES
The II. By the Grace of God King of England, Scotland, &c. Defendor of the faith.

Most Gracious, and dread-full Soveraign.

THe *pretended Parliament of* England *having their Agents lately in the* Low Countries, *treating with the* United Provinces *about conditions of an offensive and defensive warre, my resolution was to have set out this Remonstrance in the* Dutch tongue *for the satisfaction of those* Provinces; *but the treaty ended almost as soone as I began to actuate my resolution: whereupon I altered my purpose, and have now set it out in* English *for the satisfaction of your owne Subjects, hoping the truth beeing*

here clearly illuſtrated, may have ſome effect upon their Conſciences, *which can not but have great ſway over them in ordering and directing their Actions. Experience teacheth that moſt men act leſſe bouldly and reſolutely, (eſpecially where their lives muſt be engaged) when they act againſt their* Conſcience, *then when they are perſuaded of the lawfulneſſe and juſtice of their cauſe. There hath been more blood ſpilt by civill warre in your* Majeſties *dominions within the ſpace of ten yeares, ſince thoſe pernicious* principles *touching the* Supreamacy of the People *and* lawfulneſſe of reſiſtance *have been inſtilled into mens mindes by ſome who fetched their doctrine from Hell to furniſh the world with tragedies, then formerly in an Hundred. I conceive the neareſt and readieſt way to reforme ſuch un-chriſtian practices, is to reforme the* Conſcience, *although I deny not but more ſharpe and violent remedies muſt alſo be applyed: for ſome have loſt all ſence of* Conſcience, *whome your* Majeſty, *I hope, aſſiſted by the almighty providence of God, ſhall reforme by the* Sworde. *This is that which Religion calls for*

at

at your hands, now oppreſſed by ſuch a multitud, and confuſed ſwarme of Sectaries, *that I ſhould thinke it impoſſible for ſo many men of ſeverall Religions to live together in unitie, did not the* Likeneſſe *of their* Nature *and* Manners *reconcile their affections, as much as their differences in* Religion *can alienate and eſtrainge them. And this is that which all your faithfull Subjects pray for, who deſire nothing more then to ſee your* Majeſty *ſeated in your* Royall Throne, *and able to protect them from the inſolencies of the Rebells, who make their will their law, diſpoſing as freely of mens lives and fortunes, as if they had* created *them and given them their* Beeing.

It is a rule in Opticks, *when a darke body is greater then a light to which it is directly oppoſed, it caſteth a ſhaddow* in infinitum: *Such a ſhaddow (if the continent were capable of an infinite ſhaddow) will the darke body of the Rebells caſt upon the Kingdome of* England, *whilſt it is interpoſed between your* Majeſty *and your loyall Subjects, depriving them both of your favourable* Aſpect, *and of your* Light *and* Influence, *without*

out which they can looke for nothing but a continuation of their present miseries: for should the Rebells prevaile and prosper in their designes, what else can be expected, but that which is wrested from others by Force *and* Violence, *should be maintained by* Tyranny *and* Injustice? *But whilst they wade in* blood *to places of preferment and command, the Lord shal overthrow them in the middest of their course, as he overthrew the Ægiptians in the* red sea; *I usurpe not the name of a* Prophet, *but I speake as one beleeving God to be a faithfull observer of his promises: He will not alwayes be deafe to the prayers and complaints of those that are oppressed, but send them deliverance in his due time, and supply your Majesty with all things necessary both to vindicate your owne Rights, and free your People from their oppression.*

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AN INTRODUCTION.

The beginning, rayſe, and progreſſe of the rebellion rayſed by the pretended Parliament. The Principles whereby they endeavour to juſtify their proceedings. The Queſtions that ſhall be diſcuſſed.

I Looke upon the government of England if the lawes might be reſtored to their ancient dignity and authority as inferiour to none in the world Parliaments whilſt the King and people have acted in their ſeverall ſpheres, and not invaded the rights and priviledges

ledges of on another, have alwayes beene the ſureſt meanes under God to unite their affections together, and to prevente thoſe dangers which by their mutuall diſcord muſt of neceſſity haye ruined both. Some are ſo raſh as to affirme that all tranſactions, negotiations, and accords betweene Kings and ſubjects ought to be interdicted, not onely depriving ſubjects of the light and favours which they ſhould receive from their Prince, but Princes alſo of many commodities which they may receive by capitulating with their ſubjects in Parliaments, where the whole kingdome being preſent, eyther in perſon, or by repreſentation, may give the King, and receive from him againe, ſuch reciprocall teſtimonies of love, that he may be aſſured his people ſeeke nothing more then the preſervation of his life, honour, and Royall dignity; and they, that their King endeavoureth no leſſe to encreaſe and maintaine the liberty, riches, and proſperity of his people. And I am confident the laſt Parliament had beene as great a bleſſing to the land as ever any was in former ages, had not the ambition, avarice, and malice of ſome interrupted the courſe of the lawes. But for this factious aſſembly which hath a longe time called themſelves a Parliament, it is a diſturber of the Kingdoms peace, an enemy and deſtroyer of the people; and if we looke upon their actions in their beginning, in their rayſe, and in their progreſſe, they may ſeeme

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to have had alwayes a formall oppoſition to juſtice and to have acted by ſome occult and ſpecificall quality not common to other Chriſtians. There was endeed at the firſt beginning of the Parliament, much murmuring and diſcontent amongſt the people, partly cauſed by monopolies and the unuſuall taxation of ſhippmoney, and partly by the rigorous proceedings of the Starre-chamber and High Commiſſion, whereby divers were often oppreſſed: Here the enemies of the commonwealth, finding a ſpacious overture to enter into this rebellion, began to act their partes, and being too provident to looſe ſuch an advantage, laboured to exaſperate the mindes of the people, and to ſtirre up thoſe evill humours which began already to appeare. And although his Majeſty offered all juſt ſatisfaction for what was paſt, and the beſt ſecurity themſelves ſhould in reaſon require that the like diſorders might for ever after be prevented, yet theſe turbulent and factious ſpirits, being men of broken fortune, and hoping to heale themſelves by the ruine of others, oppoſed all ſuch motions, and would needs themſelves become chirurgions to the ſtate; and as chirurgions are wont to ſmooth and ſtroake the partes which they reſolve ſhall bleede, ſo they began to ſmooth and ſtroake the people, promiſing them a new light in matters of religion, and that they would remove the grievances, and ſweeten the evills which afflicted the commonwealth,

although in ſtead of removing and ſweetning them, they have almoſt made them incurable. By theſe perſwaſions mixed with many pretences of religion they procured the people to meete together in great multitudes, and in a tumultuous manner to aſſault divers of the Lords as they were going to the Parliament, and to drive them backe againe, not permitting them to ſpeake in the houſe when their ſpeech was moſt neceſſary for the ſervice of the kingdome. Although it was eaſy for his Majeſty to diſcover their intentions, yet the love he bare his people made him to diſſemble it, and to give way to their proceedings, hoping they might in time be brought by his favours to mitigate and correcte their furious practices; but finding at laſt that his patience ſerved for nothing elſe but to fortify and encourage them in their mallice, he thought himſelfe obliged to take ſuch wayes as he judged moſt convenient to ſtope the courſe of their proceedings, the continuation wherof was like to bring ſo many miſchiefs to the commonwealth: and ſeeing it was like to be prejudiciall to the ſafty of the people as well as to his owne to ſtay longer in a place where there was neyther ſecurity for his perſon, nor liberty for any other then thoſe factious perſons to vote according to the dictats of their owne reaſon, he was forced to withdrawe himſelfe from the Parliament to avoyde the pernicious effects of thoſe mens counſells which were reſolved the whole common-

monwealth ſhould ſinke rather then themſelves not obtaine thoſe places of command and profit which they aymed at. The King being gone it was not to be wondred if they which in his preſence had the bouldneſſe to weave ſuch pernicious deſignes againſt the ſtate, ſhould in his abſence endeavour to corrupte the fidelity of his ſubjects and frame new practices to ſtirre up the people to rebellion, for having the citty of London wholy at their command they neyther wanted means nor opportunity to drawe the people to their faction, who by ſuch artificiall divices as they uſed were eaſy to be inſnared: They tould them that by reſiſting the King they ſhould not be rebells, but an army authoriſed by thoſe which were depoſitaries of the Kings authority, that this reſiſtance was an inſpiration from heaven which promiſed the reſtauration of their ancient liberties that had beene ſo often violated by the King: They made them beleeve that the authority of the King and the whole commonwealth would be brought into confuſion if they did not vigorouſly oppoſe thoſe diſorders were growing upon them, and remove thoſe evill counſellors from the King that did miſlead and ſeduce him; and withall they entred into a league and covenant with the people to preſerve and defende the Kings Majeſties perſon and authority together with the liberties of the kingdome, aſſuring them they had no thoughts or intentions to diminiſh his Majeſties

juſt power and greatneſſe. They enticed ſome by theſe divices, and compelled others to fight againſt their conſciences, thinking to ſtrengthen themſelves by a multitude, or at leaſt to make their owne ruine more famous by the ruine of ſo many others. But it pleaſed God they ſhould prevaile for a time; and now we ſee the effects contrary to thoſe words and promiſes which were ſo ſolemnly made to the whole kingdome, and that by calling God a witneſſe to the ſyncerity of their intentions: for they have not only diminiſhed his Majeſties juſt power and greatneſſe, but moſt traiterouſly deprived him of his life, and that after he had condeſcended ſo farre as to ſatisfy all their unreaſonable demands, which fact of theirs although it hath beene masked with many ſpecious pretences, and coloured with the faireſt ſhewes of juſtice, yet was it the moſt execrable murder that ever was committed next that of our ſaviour Chriſt, and his ambitious judge hath gained this, that next PILAT BRADSHAW of all ſuch judges ſhall by poſterity be eſteemed the chiefe. This murder of the King as it was moſt unjuſt, ſo was it alſo moſt unſeaſonable conſidering the preſent diſpoſition of the kingdome, whoſe ſtrength being already too much weakened and attenuated, ought not to have beene further waſted and conſumed by renewing the warre which the death of the King did threaten. But ſuch motions could worke nothing upon

on thoſe which had long before reſolved to make all other conſiderations give place to profit and ambition; the people abuſed themſelves whilſt they thought this factious aſſembly would be more carefull and tender of them then of the King: for they have not onely brought a new warre upon them which might have beene avoyded, daſhinge them all againſt one another, but have alſo themſelves many wayes barbarouſly afflicted and deſtroyed them: they have made the ſcaffold, the gibbet, the priſon, and the grave, the common places of their rendevous, and thoſe which they havenot devoured by their cruelty, they devoure by their inſatiable avarice; whilſt they declayme againſt Kings for oppreſſing the people by unjuſt taxations, they have themſelves, as hath beene computed by many, ſqueeſed more in one yeare from the commonwealth then all the Kings of England have done ſince the conqueſt. The lawfull Mageſtrates are deprived of the liberty and honour of their functions; and ſuch as are the greateſt enemies to juſtice are ſet up in their places; ſome are bereft of their eſtates, others driven out of the Kingdome and forced to ſeeke a forraine ayre, where they may breath more freely then in their owne: The whole Nobility, Cleargy, and Commonalty walke deſolatly and mournefully up and downe, being no more like the men they were, then the skinnes of ſacrificed beaſts are like their living bodies. And after all theſe

indignities offered to the King and people, they indeavoure contrary to the lawes to alter the government and to pull up the very foundation of the Kingdome, calling their new frame and ſtructure a Free Eſtate, and themſelves the keepers of the freedome of England: Thus having guilt over this Idoll of their owne fancy, they force all men to fall downe and worſhipe it; they whoſe vertue oblige them to refuſe, are caſt into a furnace hotter then that of Babylon. Seeing the body of the Kingdome devoured thus to the very entrailes, I could not without horrour behould ſuch a miſerable carkaſſe ſo rent and torne in every parte, nor could I ſatisfy mine owne conſcience if I ſhould not endeavour according to my poore abilities to oppoſe the rage and fury of theſe men which are growne ſo fatte with the blood and ſpoile of others: My intention therefore is reſerving matters of fact for another place to ſpeake here of matters of right, and to ſhew the injuſtice of their cauſe, and diſcover the falshood of all thoſe Principles, whereby they endeavour to juſtify their proceedings, not doubting but I ſhall ſo farre convince the underſtanding of all thoſe that ſhall read this inſuing diſcource, that they ſhall not hereafter enter into any combination with the rebells or continue with them in caſe they be already engaged, except their hearts be hardened ſo farre as they dare act in matters of ſuch concernment contrary to their conſciences.

The

The Principles and grounds whereby they endeavour to juſtify this preſent warre againſt the *King* are two ; Firſt they ſay that it is lawfull for the people to reſiſt their ſoveraigne and ſupreame governours by force of armes in caſe they be Tyrants, and bent to ſubvert the lawes and religion eſtablished , or by illegall proceedings invade the lives, eſtates, or liberties of their ſubjects. But there is ſome diſagreement amongſt them in the reſtriction and limitation of their Principle ; for ſome give free ſcope and liberty to all privat perſons to reſiſt and with their ſwords in their hands to defende their lives and eſtates againſt the unjuſt invaſion of all *Kings* and governours whatſoever. Others do a little ſtint the people and limit the bounds of reſiſtance, permitting none to have that power but ſubordinat magiſtrates, or the people collectively taken and their ſubſtitutes in Parliament. Yet theſe content themſelves with the ſame particular inſtances brought by the others , alledging little beſyds particular examples , as the example of David who as they ſay would have reſiſted Saul if occaſion had beene offered ; The example of the Prieſtes, who, as they ſay aſſaulted Uzziah, and ſuch like examples of particular men , which were neyther the people collectively taken , nor their ſubſtituts in Parliament, nor yet the greater part ſubordinat Magiſtrates. This is their firſt Principle , which yet ſome of them diſlike , confeſſing it to be againſt

the Lawe of God, and to tend directly to the ruine and ſubverſion of government: theſe have thought upon an other way how to make good their rebellion, and proceed upon another Principle, namely that ſupream juriſdiction belongs to the people; the King they ſay is *major ſingulis* but *minor univerſis*, greater and hath more authority then any one of his ſubjects taken by retaile, but taken in the groſſe his ſubjects are greater and have more authority then he; and theſe agree altogether in this that they teach all authority to be originally in the people *tanquam in primo ſubjecto creato* as in its firſt ſubject immediatly under God, and from them tranſlated to Magiſtrates; Kings they ſay were promoted to that authority by the adoption of the people, which did voluntarily ſubmitte themſelves and communicate their authority to thoſe which they thought moſt capable to defend them, and to adminiſter juſtice. *Mr. Prynne* affirmeth that even thoſe Kings vvhich vvere appointed immediatly by God himſelfe received their authority from the people, vvho might have refuſed them notvvithſtanding they vvere annointed by God and deſigned unto that office, their free choice being no vvayes reſtrayned or limited by that deſignation. *It is apparent* ſayth he *that the Iudges and Kings of the Iſraelites were not properly hereditary but oft elective by the people: and though God did ſometimes immediatly nominat the perſons of thoſe that ſhould reigne*

The ſoveraignepower of Parliaments and Kingdomes page 124.

reigne over them, as is apparent by Saul, David, Ieroboam, Iehu, others; yet the people did constantly confirme, make them Kings, and gave them their Royall authority, none being made Kings by divine appointment, but such as they willingly accepted, approved, confirmed for their Kings; Gods previous designation being but a preparative to their voluntary free (not restrayned or limited) election. Yet these are divided amongst themselves about the extent and latitude of the power that may be translated; for some of them say that the rights of soueraignitie belonge to the people by the law of nature, and are so essentiall to them that they can not be seperated or divided from them; they can not be taken away by conquest, they can not part with them by consent, but under what forme of gouvernment soever they live, by what means soever established and set up, they have still reserved in them a supreame jurisdiction over all Magistrates, by which they are authorised to give a legall judgement upon all their actions, and to resume againe their whole authority when they shall see occasion, making a circle in government, and granting a power in Magestrates to judge and governe the people, and also in the people to judge and governe their Magistrates. So that by their opinion not only the people of England, but the people of all other Kingdomes and commonwealthes have authority over their Magestrates to judge juridically whether

their actions be juſt, and in caſe they finde them not ſuch, to deprive them of all authority, to puniſh them with death or otherwiſe as they ſhall thinke it expedient. Others on the contrary ſide ſay that the people may looſe the rights of ſoveraigntie by conqueſt, or parte with them by conſent, ſo that they ſhall not reſerve to themſelves ſupreame juriſdiction over their Mageſtrates to judge juridically whether their actions be legall or illegall; but the people of England, they ſay, have not *de facto* parted with their authority in ſuch a full degree, but are ſupreame by the lawes of the land, or at leaſt coordinate with the King; for at the firſt coalition of the government by paction and agreement made with the King they reſerved to themſelves a parte in the rights of ſoveraigntie which they ſtill hould by law. This is their other Principle as deſtructive to government as the former, and the authors and maintainers of them both agree well enough in their end, that is to ſtirre up the people to rebellion: onely, they of the firſt rank would perſwade them they may lawfully doe it by way of ſelfe preſervation, and they of the ſecond, by way of juriſdiction. I intende now by Gods aſſiſtance to examine theſe miſchievous Principles, and to diſcover as well the falſity of them as the dangerous conſequences that flow from them, which I hope to performe with ſuch clearneſſe, and evidence that the moſt hare-brainde ſectaries amongſt them ſhall be convinced

vinced if they will but read that which ſhall be alledged againſt them.

Now that I may proceed in opening and clearing the truth with the better methode, I will divide the matter I am to handle into two partes; In the firſt part I will ſpeake of ſupreamacy, and here I will ſhew that the *King* alone is the only ſupreame head and governour of the Kingdome of England, and that all the people and their deputies in Parliament, as well collectively taken, as ſeverally, are his ſubjects and not coordinate with him: In the ſecond part I will ſpeake of reſiſtance, and there I will ſhew that the ſupreame Mageſtrates and governours of any Kingdome or commonwealth may not by their ſubjects be reſiſted by force of armes upon any pretence of tyranny or miſdemeanour or upon any other cauſe or pretence whatſoever. I will beginne with ſupreamacy, becauſe they endeavour now chiefly to purge themſelves from the murders and injuſtice which they have committed by the authority of the people, whoſe ſupreamacy they ſay is ſufficient to warrant their proceedings. At the firſt they denied not the ſupreamacy of the King, but as the keepers and guardians of it they rayſed an army againſt him by vertue of his owne authority, but having ſeiſed upon his perſon and impriſoned him, it was then more conducible to their ends to avouch the ſupreamacy of the people: but whoſoever have the title, they exerciſe the power themſelves, and

as before they rebelled againſt the King, ſo now they murder and oppreſſe the people by pretence of their owne authority, which as their Deputies in Parliament they intend to manage as long as they can finde means to defend and uphould their tyranny. Now although this pretended Parliament are no more deputies of the people of England, then the *Banditi* are deputies of the people of Italy, who if they had as great a power would ſoone have as great a right as they to governe under that pretence, yet for the preſent we will ſuppoſe them ſuch and examine only their Principle by which they labour to ſupporte their cauſe, that is the ſupreamacy of the people; and firſt I will ſhew that the people and their deputies in Parliament are neyther ſupreame nor coordinate with the King by the lawes of the land, as ſome of them ſay; ſecondly, that they are not ſupreame by the lawes of nature, as others; thirdly, that the people never had in them any authority or juriſdiction at all which they could give or reſume againe upon occaſion, as they generally affirme; and theſe particulars I intende to handle in three queſtions.

The firſt queſtion ſhall be, whether the people and their deputies in Parliament be ſupreame and above the King or coordinate with him by the lawes of the land.

The ſecond, whether the people and their deputies in Parliament be ſupreame by the lawes of nature,

ture, and have alwayes reſerved a juridicall power of judging their magiſtrates, whether their actions be juſt, and of reſuming authority in caſe they be not.

The third whether authority be originally in the people and tranſlated by them to Kings and other ſupreame magiſtrates, or in the Kings and other ſupreame magiſtrates themſelves immediatly from God *tanquam in primo ſubjecto creato*, as in the firſt created ſubject.

as before they rebelled againſt the King, ſo now they murder and oppreſſe the people by pretence of their owne authority, which as their Deputies in Parliament they intend to manage as long as they can finde means to defend and uphould their tyranny. Now although this pretended Parliament are no more deputies of the people of England, then the *Banditi* are deputies of the people of Italy, who if they had as great a power would ſoone have as great a right as they to governe under that pretence, yet for the preſent we will ſuppoſe them ſuch and examine only their Principle by which they labour to ſupporte their cauſe, that is the ſupreamacy of the people; and firſt I will ſhew that the people and their deputies in Parliament are neyther ſupreame nor coordinate with the King by the lawes of the land, as ſome of them ſay; ſecondly, that they are not ſupreame by the lawes of nature, as others; thirdly, that the people never had in them any authority or juriſdiction at all which they could give or reſume againe upon occaſion, as they generally affirme; and theſe particulars I intende to handle in three queſtions.

The firſt queſtion ſhall be, whether the people and their deputies in Parliament be ſupreame and above the King or coordinate with him by the lawes of the land.

The ſecond, whether the people and their deputies in Parliament be ſupreame by the lawes of nature,

ture, and have alwayes reſerved a juridicall power of judging their magiſtrates, whether their actions be juſt, and of reſuming authority in caſe they be not.

The third whether authority be originally in the people and tranſlated by them to Kings and other ſupreame magiſtrates, or in the Kings and other ſupreame magiſtrates themſelves immediatly from God *tanquam in primo ſubjecto creato*, as in the firſt created ſubject.

THE FIRST QUESTION.

Whether the people and their deputies in Parliament be ſupreame and above the King or coordinat with him by the Lawes of the land.

CHAP. I.

The ſtate of the Queſtion explained.

THE firſt Queſtion that ſhall come into conſideration is whether the people and their deputies in Parliament be ſupreame and above the King or coordinat with him by the Lawes of the land. The pretended Parliamentarians

rians affirme the two houſes to be coordinate with the King in the rights of ſoveraigntie : for the Monarchy of England, they ſay, is a mixed Monarchy, and this mixture is in the povver and rights of Majeſty themſelves, ſo that the King alone hath not full and plenary authority to performe all acts requiſite to government, but there is in the Monarchy a concurrence of ſeverall povvers belonging to ſeverall eſtates, vvhich being mixed together make up one vvhole and intire povver, and thoſe ſeverall eſtates one ſupreame head of the commonwealth. And although ſome of them are ſo liberall as to allow the King a primity of ſhare in this coordination : yet others ſay that the ſuperiority belongs to the tvvo houſes, the King being greater then any one of the members of Parliament, but leſſe then the two houſes collectively taken, who in the legiſlative povver, vvhich is one of the principall rights of ſoveraignty, have a greater intereſt then He, in whoſe breaſts alone remaineth the finall determination of lavve; for they deny the King to have a negative voice, as if his ſitting in Parliament vvere a ceremony and meere formality, and not an acte of Majeſty and Iuriſdiction. This foundation, as I thinke, was firſt layd by the fuller Anſwerer, but the Treatiſer, the reverent Divines, and divers others have added a ſuperſtructure to it of many fine and new inventions of their owne, which are not needfull to be here related, becauſe they alter not

the ſtate of the Queſtion ; for they all affirme the two houſes to be coordinate with the *King* in the rights of ſoveraigntie , and the mixture of the Engliſh Monarchy to be in the power it ſelfe. I will ſet downe their aſſertions in the fuller Anſwerers owne wordes. *Before we judge* ſayth he , *of what a Parliament can doe in England , it will be needfull to know what kind of government this of England is , we are therfore to know that England is not a ſimply ſubordinative and abſolute , but a coordinative and mixt Monarchy ; this mixture or coordination is in the very ſupreamacy of power it ſelfe , otherwiſe the Monarchy were not mixt : all Monarchies have a mixture or compoſition of ſubordinate and under officers in them , but here the Monarchy or higheſt power it ſelfe is compounded of three coordinate eſtates , a King, and two houſes of Parliament.* And againe a little after he ſayth, *But you ſay, what? is not the Parliament ſubordinate to the King ? Are they not all ſubjects ? I anſwer , the Parliament can not be ſayd properly to be a ſubject , becauſe the King is a part , and ſo he ſhould be ſubject to himſelfe : no nor are the two houſes without him ſubjects , every member* ſeorſim, *taken ſeverally , is a ſubject , but all* collectim *in their houſe are not.* In his anſwer to Doctor Ferns reply he addeth further. *Although every one and all the members are ſubjects, the houſes can not properly be ſayd to be ſubject and coordinate too ; they are the two* membra dividentia, *which muſt*

at

at no hande admit coincidence : nay tho' all the members as partes and put them together too are ſubjects, yet all the partes of a whole taken all together are not equall to the whole, the order, ſite, relation, union of the partes, whence the formality of the whole reſults, being ſtill yet wanting. Theſe are the phantaſies of the pretended Parliamentarians, which are ſo groſſe and contrary to law, that the fuller Anſwerer ſeems to me to have beene in a dreame, when his heade was firſt impregnated with ſuch conceptions, as alſo to have done very improvidently in making the ſite, relation, order, and union of the members neceſſary to his coordination; for although I know not what ſite and relation the members may have had amongſt themſelves, yet I am ſure there hath not beene ſo much order and union amongſt them as will lift them out of the condition of ſubjects, and make them coordinate with his Majeſty.

I ſay therefore in oppoſition to theſe phantaſies, firſt, that the King alone is by the lawes of the lande the only ſupreame head and governour of England, and that the people and their deputies in Parliament taken both *collectim* and *ſeorſim* as well *collectively* as *ſeverally* are his ſubjects and not coordinate with him : there is no mixture at all in the rights of ſoveraigntie ; for in reſpect of the power it ſelfe, the Monarchy is abſolute, ſimple, pure, independent, without prophanation of outward mixture, the King alone without further influence from the two

houſes having full power and authority to doe or cauſe to be done all actes of juſtice, ſo that what intereſt and authority ſoever the two houſes have in making lawes or in the exerciſe of any other acte of power, they have it by derivation from him. The King alone makes lawes by the aſſent of the two houſes, and if the two houſes are ſayd at any time to make lawes, it is by a deligate power and authority communicated to them from him, and not by any power and authority which they have radically in themſelves.

Secondly I ſay that the King alone is not onely inveſted with all the rights of ſoveraignty, but hath them alſo ſo inſeperably annexed to his Royall perſon by the lawes of the lande, that they can not be ſeparated from him by any act of Parliament, by any civill conſtitution, or pragmaticall ſanction, by any law, or ordinance whatſoever; but in caſe the King himſelfe ſhould improvidently by acte of Parliament agree to any thing tending to the diminution of his Royall dignity, it is then in the power of the common law to controule ſuch a ſtatute, and to make voyd all ſuch actes as tende to the degradation, much more ſuch as tende to the annihilation of Majeſty. Having thus opened the ſtate of the Queſtion, I will novv proceede to demonſtrate the truth by ſtatutes, by common lavv, and by reaſons depending upon the lawes and cuſtomes of the land.

CHAP.

CHAP. II.

The Kings ſupreamacy in generall ſhewed by the ſtatutes of the land.

I Could both from Saxon and divers other lavves and antiquities ſhevv the *K*ings of England to have ruled more abſolutely, and to have anciently exerciſed a larger juriſdiction, then hath of later yeares been exerciſed or chalenged by their ſucceſſours: but becauſe many immunities and priviledges have been granted to the ſubjects ſince their times; I vvill therfore confine my ſelfe to ſuch ſtatutes as have beene made ſince the giving of the great charter. And to avoyd tediouſneſſe I will omit many ſtatutes wherin the *K*ing is by both houſes collectively taken acknowledged to be ſu-

preame : for they frequently in the ſtatutes ſtile him *Our gracions ſoveraigne Lord the King. Our dreadfull ſoveraigne Lord the King.* I will likewiſe omitte many others wherin they acknowledge themſelves to be his ſubjects , and that when they were in their ſite, relation, order, and union, in which poſture the fuller Anſwerer fancies them to be coordinate : for ſuch expreſſions run through divers ſtatutes , *Moſt humbly beſeech your moſt excellent Majeſty your faithfull and obedient ſubjects the Lords ſpirituall and temporall , and the commons in this your preſent Parliament aſſembled. In their moſt humble wiſe ſhewen unto your Royall Majeſty your loving ſubjects the Lordes ſpirituall and temporall, and the Commons of this preſent Parlament aſſembled.* I will only alledge ſuch ſtatutes as have been made on purpoſe to declare to whome ſupreamacy and all power and juriſdiction belong : for there hath beene divers actes of Parliament made to that ende upon ſeverall occaſions wherein the Kings ſupreamacy hath been acknowledged and confirmed vnto him. In the foure and twenty yeare of Henry the eight an act was made that no appeales ſhould be uſed but within the Realme : the reaſon alledged in the Statute is becauſe the King alone is the only ſupreame head of the realme, and is furniſhed with plenary and intire power to doe all actes of juſtice. *Where by divers ſundry old authenticke Hiſtories and Chronicles it is manifeſtly declared and ex-*

expreſſed that this Realme of England is an Empire, and hath ſo beene accepted in the world, governed by one ſupreame head and King, having the dignity and Royall eſtate of the imperiall crowne of the ſame: unto whome a body politique, compact of all ſortes and degrees of people divided in tearmes and by names of ſpiritualty and temporalty beene bounden and owen to beare next to God a naturall and humble obedience, he being alſo inſtitute and furniſhed by the goodneſſe and ſufferance of Almighty God with plenary, whole, and intire power, preheminence, authority, prerogative, and juriſdiction, to render and yeald juſtice and finall determination to all manner of folck reſiants or ſubjects within this his Realme. This cleare teſtimony of the *Kings* ſupreamacy, is thus eluded by the fuller Anſwerer. *Wee ſee then* ſayth he, *What is meant by governed by one ſupreame head, ſuch a one as is able to doe all actes of needfull juſtice, which the King in his naturall capacity can not doe (he can not make a law) it muſt therefore be underſtood in his full and intire politique capacity, which takes in law and Parliament; nor can it be ſayd that by thoſe wordes a body politique compact of all ſortes and degrees the Parliament is properly meant, but the Kingdome at large.* The ſumme of his Anſwer is this, that in this Statute by the *King* not the *King* alone, but the *King* and the two houſes of Parliament are to be underſtood, and ſo although he would have the *Kings* power to be leſſe, yet to make him amends

Anſwer.

Reply.

mends he will have his name to signify more then it did before. But this is nothing else but the evaporation of his owne braine; for if in any place the word *King* could signify the *King* and the *two houses of Parliament*, yet in this it must of necessity signify the *King* alone: these words *having the dignity and Royall estate of the Imperiall crowne of the same*, can have reference to no other. Besids in this Answer he contradicts his owne Principles: for if the two houses be coordinate with the King, and have power radically in themselves, not derived from him, they can not be comprehended under his politique capacity. Whereas he sayth the King can not make a law, and inferre from thence that the King alone without taking in the two houses hath not intire and plenary jurisdiction, his inference is very infirme; for it doth not diminish Majesty, but redounds to the glory of it, to give lawes to the people by the counsell and assent of wisemen: It hath been, and is for the most part the practice in absolute Monarchies, to make lawes that shall binde posterity by generall consent and agreement, which yet doth not deprive the Monarch of his power, or derogate any way from the plenitud and intireneſſe thereof. But I shall speake more of this when I come to answer their objections. Whereas he sayth that by a body politique compact of all sortes and degrees, not the Parliament, but the kingdome at large is properly meant, I know not why he should adde this, except it were

35. H. 8. cap. 1.

Argum. l. 8. c. de legibus.

vvere to fill up more roome, for no man vvill say that the tvvo houſes alone are properly to be meant, yet I say the tvvo houſes are comprehended under the kingdome at large, and are repreſentative thereof in Parliament, and repreſentatives can not be the head vvhen the kingdome at large, vvhoſe repreſentatives they are, is but the body. But here the fuller Anſwerer hath a little overſhot himſelfe; for if by the body politique the Kingdome at large be underſtoode then is the King *major univerſis* greater then all the people collectively taken by his owne confeſſion.

In the firſt yeare of Queene Elizabeth another Acte vvas made, vvherein ſhe is declared ſupreame head of the Realme in all cauſes as wel Eccleſiaſticall as Temporall, and an oath injoyned to be taken by divers both Eccleſiaſticall and Lay perſons, wherein they were to acknowledge hir ſupreamacy, and to promiſe faith and true allegiance: the oath was this, *I A. B. do utterly teſtify and declare in my conſcience, that the Queens Highneſſe is the only ſupreame governour of this Realme, and of all other hir Highneſſe dominions and countries, as well in all Spirituall or Eccleſiaſticall things or cauſes, as Temporall, and that no forraine Prince, Perſon, Prelat, State, or Potentate, hath or ought to have any juriſdiction, power, ſuperiority, preheminence, or authority Eccleſiaſticall or Spirituall within this Realme, and therefore I doe utterly renounce and for-*

ſake all forraine juriſdictions, powers, ſuperiorities and authorities, and do promiſe that from henceforth I ſhall beare faith and true allegiance to the Queens Highneſſe, hir heires, and lawfull ſucceſſours, and to my power ſhall aſsiſt and defend all juriſdictions, priviledges, preheminences, and authorities, granted or belonging to the Queens Highneſſe, hir heires, and ſucceſſours, or united and annexed to the imperiall crowne of this Realme; ſo helpe me God and the contents of this booke. They anſwer, firſt, that this Statute was made to exclude a forraine power, and therefore all that can be collected out of it is that the Queene was above all forreiners, but not above the two houſes. It is no matter wherefore the Statute was made, the Queene is there poſitively declared to be the onely ſupreame governour of the Realme, the wordes of a Statute, whatſoever the end was, are the law, and are pleadable in their uſuall and grammatcall ſence to all purpoſes. But was the oath framed onely to exclude a forraine power, are they ſure of that? When God ſhall make inquiſition for blood, and call the reverent Divines, the fuller Anſwerer, the Treatiſer, and the reſt of their Complices, to account for all the murders, oppreſſion, and injuſtice, whereof they have been the authours and abettors by ſtirring up the people to rebellion, and teaching them lies, they will be found to have broken the oath of alleagiance, now his Majeſties rights have beene invaded by the two houſes

1. Anſwer.

Reply.

houſes , as well as if they had beene invaded by a forraigner : For the Statute was made as well to declare who was the ſupreame governour of the Realme , as to declare who was not ; The Pope chalenged no ſuperiority over the Queene in Temporall matters , and yet in the oath the Queene is acknowledged the ſupreame governour of the Realme as well in Temporall as in Eccleſiaſticall cauſes : This had been very ſuperfluous , and a kinde of *Excreſcence* in the oath if it had beene compoſed and given onely to exclude the Pope; and I wonder the Reverent Divines and the reſt attributing ſo much to other Parliaments ſhould attribute ſo little to that as to imagine them not able to frame a Statute in wordes and tearmes ſutable to their ends and intentions ; for ſurely their invention was much ſtraitned if they could not declare the Popes authority to be voyd otherwiſe then by calling the Queene the onely ſupreame governour of the Realme , which was neyther true nor a fitte expreſſion, if the two houſes had beene coordinate with hir : neyther had they ſufficiently excluded a forraine power by this Act, which, they ſay, was the onely end was aymed at : for the Pope claimed ſupreame juriſdiction over all in Eccleſiaſticall cauſes, as well over the two houſes as over the Queene, yet in this Act proviſion is made for none but the Queene ; by the title of the Statute all ancient juriſdictions are reſtored to the crowne, but there is no

reſtauration of dignity or juriſdiction to the people or to their ſubſtitutes in Parliament, ſo that the Pope hath yet an intereſt in the Kingdome, notwithſtanding any thing enacted in this ſtatute, if their aſſertion were true. Secondly they anſwer, that the Queene is declared to be ſupreame in reſpect of perticular perſons, but not in reſpect of the people collectively taken, or their ſubſtitutes in Parliament.

2. Anſwer.

Reply. The Queene is declared in the oath to be *ſupreame governour of the Realme*, and the *Realme* includs the people collectively taken, beſids ſupreamacy can not admit of that diſtinction, for they that have any above them or coordinate with them are not ſupreame, although they be greater then any one in particular. Thirdly they anſwer that the Queens ſupreamacy was to be underſtood *in curia non in camera* in hir *courtes* and not in hir *privat capacity*.

3. Anſwer.

Reply. The Queene by communicating hir authority to hir courts did not part with it hir ſelfe; Mr. Lambart in his diſcourſe upon the high courtes of juſtice almoſt at the end of his booke ſpeaks punctually to this exception, *Thus have I* ſayth he *run along our courtes of all kindes, and have ſayd (as I was able) ſeverally of theſe lay and mixed courts of record, deriving them from the crowne their originall, and drawing by one and one (as it were ſo many roſes) from the garland of the Prince; leaving nevertheleſſe the garland it ſelfe undeſpoyled of that hir ſoveraigne vertue in the adminiſtration of juſtice: or as Bracton* ſayth

ſayth well ; Rex habet ordinariam juriſdictionem, & omnia jura in manu ſua, quæ nec ita deligari poſſunt quin ordinaria remaneant cum ipſo Rege : And therefore whatſoever power is by him committed over unto other men , the ſame nevertheleſſe remaineth ſtill in himſelfe in ſo much as he may take knowledge of all cauſes unleſſe they be felony , treaſon , or ſuch other , wherein becauſe he is a party , he can not perſonally ſit in judgement , but muſt performe it by his delegates. The Kings authority then is as well in his perſon in regard of his private , as in his courtes in regard of his politique capacity , and according to the Acts of Soveraigntie and Majeſty onely in his perſon ; for a delegate power can not be ſupreame : not but that it is the ſame authority whereby he acts himſelfe in perſon, and his judges in his courtes, but becauſe it is not all the ſame authority, but reſtrained in his Iudges by commiſſion, write, or law.

In the firſt yeare of Edward the ſixt an Act was made wherein the King is acknowledged to be the ſupreame head of the Church and Realme , and that all power and authority was derived from him. *Whereas the Archbishops and Bishops and other Spirituall perſons in this Realme do uſe to make and ſend out their ſummons , citations and other proceſſe in their owne names in ſuch forme and manner as was uſed in the time of the uſurped power of the Bishope of Rome , contrary to the forme and order of the ſummons and proceſſe of the common law , uſed in this* 1. E. 6. cap. 2.

Realme. Seeing that all authority of juriſdiction Spirituall and Temporall is derived and deducted from the Kings Majeſty as ſupreame head of theſe Churches and Realmes of England and Irland, and ſo juſtly acknowledged by the cleargy of the ſayd Realmes, and that all courtes Eccleſiaſticall within the ſayd two Realmes be kept by no other power or authority eyther forraine or within the Realme but by the authority of his moſt excellent Majeſty. Be it therefore further enacted, &c. Is it not evident from hence that the two houſes of Parliament are ſubordinate to the King and that they have their power by derivation from him, who is the fountaine of all authority? Theſe words *ſeeing that all authority of juriſdiction Spirituall and Temporall is derived and deducted from the Kings Majeſty, as ſupreame head of theſe Churches and Realmes of England and Irland*, doe clearely intimate the two houſes to have no authority radically in themſelves, and to be no way coordinate with the Kings Majeſty in the rights of ſoveraigntie.

For concluſion of this Chapter I will adde one Act more made in the firſt yeare of King Iames, vvherein the tvvo houſes of Parliament collectively taken made an humble recognition of their faith and obedience to him. *Ive your moſt humble and loyall ſubjects the Lordes Spirituall and Temporall, and the Commons in this preſent Parliament aſſembled, doe from the bottome of our heartes yeald to the Divine*

Divine Majeſty all humble thankes and prayſes not onely for the ſayd ineſtimable benefits and bleſsings above mentioned, but alſo that he hath further inriched your Highneſſe with a moſt Royall progeny of moſt rare and excellent gifts and forwardneſſe, and in his goodneſſe is like to increaſe the happy number of them, and in moſt humble and lowly manner doe beſeech your moſt excellent Majeſty, that (as a memoriall to all poſterities amongſt the records of your high courte of Parliament for ever to endure of our loyalty obedience and hearty and humble affection) it may be published and declared in this high court of Parliament, and enacted by authority of the ſame, that we (being bounden thereunto both by the lawes of God and man) doe recognize and acknowledge (and thereby expreſſe our unſpeakable joyes) that immediatly upon the diſſolution and decreaſe of Elizabeth late Queene of England the imperiall crowne of the Realme of England and of all the Kingdomes, Dominions, and Rights belonging to the ſame, did by inherent birthright, and lawfull and undoubted poſſeſſion, deſcend and come to your moſt excellent Majeſty, as being lineally, juſtly and lawfully next and ſole heire of the blood Royall of this Realme, as is afore ſayd, and that by the goodneſſe of Almighty God, and lawfull right of diſcent under one imperiall crowne, your Majeſty is of the Kingdomes of England, Scotland, France and Irland, the moſt potent and mighty King, and by Gods goodneſſe more able to protect and governe us your loving

loving ſubjects in all peace and plenty then any of your noble progenitors. And thereunto we moſt humbly and faithfully doe ſubmit and oblige our ſelves, our heires, and poſterities, for ever, untill the laſt drop of our bloods be ſpent: And do beſeech your Majeſty to accept the ſame as the firſt fruictes of this high court of Parliament, of our loyalty and fayth to your Majeſty and your Royall progeny and poſterity for ever. This is a farre different ſtraine from that which the preſent pretended Parliament have uſed to his Majeſty, who although bound both by oath and duty to have beene as reſpectfull and obedient towards him, yet have they themſelves after many inſolences committed againſt his perſon moſt audaciouſly and unadviſedly taken away his life, and procured others by diffamatory libells to blaſt his credit, who according to the truſt repoſed in them, ceaſe not to traduce him, and by malicious aſperſions to ſtaine his chiefeſt vertues, creeping like ſnailes over the ſweeteſt flowers, and leaving behind them their ſlime and filthineſſe.

CHAP.

CHAP. III.

The Kings ſupreamacy in particular ſhewed by the Statutes of the Land.

THe Kings ſupreamacy in generall being thus confirmed by ſeverall Acts of Parliament, I vvill novv decende into particulars, and ſhevv his Majeſty to be legally inveſted vvith all the particular rights of ſoveraigntie. I vvill beginne vvith the militia, vvhich is a right ſo eſſentiall to Majeſty, that it can not nor ought not to be ſeperated from it: For Majeſty conſiſt not in a bare and emply title, but in the rights of ſoveraigntie, vvhich he can not be ſayd to poſſeſſe, vvho vvants the ſvvorde to protect the ſepter. It vvas confeſſed by the two houſes at the beginning of theſe diſſentions, that the militia by right perteined to his Majeſty, and therefore at the firſt they

laboured to have it assigned to them by his owne assent; but he opposing their unjust desires, as knowing both his owne and the ruin of his posterity would be the necessary consequences of such a grant, they resolved, seing they could not gaine it by surrender, to take it by assault, and assisted by men of like natures and incinations, they seised upon his Majesties forts and Magazins, and have since exercised an arbitrary and tyrannicall power over the lives and estates of all that pleased them not, and none could ever please them, but such as are of the same humour and disposition vvith themselves. Afterwards the pretended house of Commons thought it fit to take upon them the tuition of the Kingdome, and to exercise the povver of the militia vvithout the Lordes; vvho though excluded from the society of government, vvill not be excluded from the society of their crimes, but are yet many of them ready to contribnte to the effusion of more bloode, vvhich by men of that faction hath of late beene accounted a very cheape commodity, and upon all occasions spilt and povvred out like vvater. I must confesse I am amazed vvhen I consider hovv confidently and desperatly they have carried on their dissignes in a case so contrary to lavv and justice; for they could not have begun a vvarre or conteſted vvith his Majesty about a matter more cleare then that of the militia, vvhich is a right so inherent in the crovvne, setled upon it by the

the fundamentall lawes of the lande, and confirmed by ſo many ſeverall actes of Parliament, that although the pretended Parliamentarians have a great dexterity in coyning diſtinctions to elude the lawes, yet they will not eaſily coyne ſuch as ſhall ſerve their turne in this particular. In the ſeventh yeare of Edward the firſt a ſtatute was made to injoyne all men to go to Parliaments, Treatiſes, and generall Aſſemblies without force and armes, wherin the Kings power over the militia is acknowledged. *The King to the juſtices of his bench ſendeth greeting. Whereas of late before certaine perſons deputed to treat upon ſundry debates had between us and certaine great men of our Realme, amongſt other things it was accorded, that in our next Parliament after proviſion ſhall be made by us and the common aſſent of the Prelates, Earles, and Barons, that in all Parliaments, Treaties, and other Aſſemblies, which ſhould be made in the Realme of England for ever, that every man ſhall come without all force and armour well and peaceably to the honour of us, and the peace of us and our Realme. And now in our next Parliament at Weſtminſter after the ſayd Treatiſe, the Prelates, Earles, Barons, and the Commonalty of our Realme their aſſembled to take advise of this buſineſſe, have ſayd, that to us it belongeth, and our parte is through our Royall ſeigniorie, ſtraitly to defend force of armour, and all other force againſt our peace at all times when it ſhall pleaſe us, and to*

punish them which shall doe contrary, according to our lawes and usages of our Realme, and hereunto they are bounde to ayde us as their Soveraigne Lord at all seasons when need shall be. We command ye that ye cause these thinges to be read afore you in the said bench, and there to be inrolled. Given at Westminster the thirtieth day of October. In another Statute made the eleventh yeare of Henry the seventh, it is declared that all the subjects of the Realme but especially those that have by the King any dignities, giftes, offices, fees, or annuities, are bounde to assist the King in his warres against all rebellions, insurrections, and powers rayſed against him. *Where every subject by the duty of his allegeance is bounden to serve and assist his Prince and Soveraigne Lord at all seasons when need shall require, and most specially such persons as have by him promotion or advancement, as grants and giftes of offices, fees, and annuities, which owe and verily be bound of reason to give their attendence upon his Royall person to defende the same when he shall fortune to go in his person in warres for defence of the Realme, or against his rebells and enemies for the subduing and repressing of them, and their malicious purpose: wherefore be it enacted and established by the King our Soveraigne Lord, by the advice of his Lords Spirituall and Temporall, and the Commons in this present Parliament assembled, and by authority of the same, that if any person or persons being within this Realme of England or Wales, having*

11. H. 7. cap. 18.

ving ſuch offices, fees, or annuties by any of his rehearſed gifties and grantes, do not give their attendance upon him, when he ſhall fortune to go in warres in his perſon, in their ſayd perſons, as their duty bindeth them: that then they and every of them making therof default (the Kings ſpeciall licence not had, or els he hath ſuch unfained ſickneſſe, letting, or diſeaſe, that he may not in his perſon come to do his perſonall attendance and ſervice after the forme afore ſayd, and that duely proved) that then every ſuch perſon or perſons forfeit and loſe their ſayd offices, fees, and annuities, and to ſtand voyd at the Kings pleaſure any acte, ordinance, or ſtatute to the contrary, after this time had or made in any wiſe notwithſtanding. By the Parliament houlden the fourth and fifth yeares of Queene Mary an Acte was made, wherin it is acknowledged that the Queene and hir progenitors had power and authority to appoint commiſſioners to muſter and array the people and ſubjects, and to levy ſuch a number as they ſhould thinke fit to ſerve them in their warres, and a remedy provided againſt the abuſes, that had formerly beene committed by divers who abſented themſelves from ſuch muſters, and brought not their beſt furniture and array with them. *Where heretofore commandement hath been given by the King and Queenes Majeſties, and other the progenitors of the Queenes Majeſtie, Kings of this Realme, to divers and ſundry perſons, to muſter their Majeſties people* 4. 5. M. cap. 3.

and ſubiects of this their Realme of England, and to levy a number of them for the ſeruice of their Maieſties, and of this Realme in their warres, ſuch as were moſt able and likelieſt to ſerue well in the ſame: which ſeruice hath beene greatly hindered, as well for that a great number hath abſented them from the ſaid muſters, which ought to haue come to the ſame, as alſo for that many of the moſt able and likely men for that ſeruice hath beene through frendſhipe or reward, releaſed, forborne, and diſcharged of the ſaid ſeruice, and ſome other not being able or meet, taken, appointed, and choſen thereunto, and yet the ſame diſability and unaptneſſe notwithſtanding, the ſame unable and unmeet perſons upon ſummes of money, or other kinde of rewardes or exactions by them payd to ſome ſuch as had the order of the ſaid muſters, haue beene alſo releaſed and diſcharged of the ſaid ſeruice, to the great improueriſhment of the ſubiects, and chiefly to the great perill and danger of this noble Realme, in the hinderance of the true and neceſſary ſeruice thereof; for remedy whereof be it enacted by the King and Queene our Soueraigne Lord and Lady, with the aſſent of the Lords ſpirituall and temporall and the Commons in this preſent Parliament aſſembled, and by the authority of the ſame, that if any perſon or perſons that ſhall be commanded at any time hereafter, generally, or ſpecially, to muſter afore any ſuch as ſhall haue authority or commandement for the ſame by or from the Kings and Queenes Ma-

Majeſties, or by the heires or ſucceſſours of the Queenes Majeſty, or by any Lieutenant Warden, or other perſon or perſons authoriſed for the ſame, do willingly abſent him or themſelves from the ſame muſters, having no true and reaſonable excuſe of ſickneſſe, or other lawfull impediment: or at their apparence at ſuch muſters do not bring with them ſuch their beſt furniture, or array, and armour, as he or they ſhall then have for his or their owne perſon in a readineſſe, ſhall for every ſuch default and offence have and ſuffer impriſonment by the ſpace of ten dayes without baile or mainpriſe, by the commandement of ſuch as ſhall have authority as is afore ſaid to take the ſame muſters, unleſſe he or they ſo offending as is afore ſaid, do agree to or with the ſaid Commiſſioners, or two of them, to pay to the uſe of the King and Queene our ſoveraigne Lord and Lady, or of the heires and ſucceſſours of the ſame our ſoveraigne Lady, for every ſuch offence, forty ſhillings for a fine: which ſaid fine after agreement for the payment of the ſame as is afore ſaid, ſhall be certified and eſtreated into the court of the Eſchequer at Weſtminſter, by ſuch as ſhall have power to take the ſaid muſters as is aforeſaid, or by two of them under their ſeales or the ſeales of two of them within the ſpace of two monthes next after ſuch agreement, to pay the ſaid fine had or made; and the ſame fine ſo eſtreated, to be levied in ſuch forme as fines aſſeſſed by the juſtices of aſsiſe or of gaole delivery in their circuits are uſed to be levied. I will omit the

ſtatutes

Coke lib. 7. 7. B.

ſtatutes made in the 11. H. 7. cap. 1. and the 2. E. 6. cap. 2. by which it appeareth that the ſubjects of England are bound to go with the King in his vvarres as vvell vvithin the Realme as vvithout: I vvill alſo omit the acte not printed made in the fifth yeare of Henry the fourth concerning the commiſſion of array, as alſo divers other acts and ſtatutes made to that effect and purpoſe, becauſe ſo much hath been ſayd about that ſubject already by his Majeſty, in his anſvver to the declaraiion of both houſes of Parliament concerning the commiſſion of array.

Secondly the legiſlative povver is an other right of ſoveraigntie, vvhereby Kings and ſupreame Magiſtrates are inabled by juſt and neceſſary lavves to provide for the peace and ſafty of their people, and this is vvholely and intirely in the King, although he be limited in the exerciſe of his povver ſo as he can not make lawes without the aſſent of the Lords and Commons aſſembled in Parliament. And this is that vvhich the pretended houſes have ſtoode ſo much upon: becauſe the Kings of England deſiring to rule their people by lenity, have out of princely clemency condiſcended ſo farre as not to impoſe upon them (vvhich they anciently did as I ſhall ſhevv hereafter) any nevv lavv, or alter and repeale the old, vvithout their ovvne conſent, they from the premiſſes would make the people beleeve that their authority is equall to the Kings, and that themſelves as their deputies are coordinate vvith him: and not

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content with the ſhare which they unjuſtly chalenged at firſt, they afterwards layd claime to all, excluding the *King* as altogether uſeleſſe in Parliaments, and denying him his negative voyce, uſurping and taking upon themſelves the whole power of making lawes, whereas they can have no other intereſt or authority but what they derive from him, that is a power of aſſenting or diſſenting what ſhall be made a law, but for the power and authority of the law which obligeth the ſubjects to obedience, that the law hath from the *King* alone: the Statutes declare this in expreſſe tearmes, for their ordinary ſtile is. 5. K. 2. cap. 4. *The King doth will and command, and it is aſſented in the Parliament by the Prelates, Lords, and Commons.* 7. H. 4. cap. 13. *Our ſoveraigne Lord the King by the aſſent of the Lordes ſpirituall and temporall and the Commons in this preſent Parliament, hath ordained.* And that the meaning and true intention of theſe expreſſions is ſuch as I have ſayd will appeare by the reſolution of the Iudges, of which I ſhall ſpeake hereafter: 22. E. 3. Now that the *King* hath a negative voyce in making lawes and that nothing can or ought to be eſteemed an Act of Parliament without him, is evident by divers Statutes. In the firſt year of King James a Statute was made wherin the two houſes petitioning the *King*, that the recognition of their duty and obedience, as alſo of his Majeſties right unto the crowne of England, might be publiſhed in high court of Parliament, to remaine as a memoriall to all poſte-

rity, conclude after thiſe manner, *which if your Majeſty ſhall be pleaſed (as an argument of your gracious acceptation) to adorne with your Majeſties Royall aſſent, without which it can neyther be compleat and perfect, nor remaine to all poſterity according to our humble deſire, as a memoriall of your Princely and tender affection towards us, we ſhall adde this alſo to the reſt of your Majeſties unſpeakable and ineſtimable benefits.* But in the fifteen yeare of Edward the third a Statute was made on ſpeciall purpoſe to make voyd an Act where unto the King had promiſed to ſet to his ſeale, and ſeemed to aſſent, (which by ſome for that reaſon was eſteemed a Statute) becauſe he had not actually aſſented and ſet to his ſeale. *Edward by the grace of God, &c. to the Sheriffe of Lincoln greeting, whereas at our Parliament ſummoned at Weſtminſter in the 15. of Eaſter laſt paſt, certaine articles expreſly contrary to the lawes and cuſtomes of our realme of England, and to our prerogatives, and rightes Royall were pretended to be granted by us by the manner of a Statute, we conſidering how that by the bonde of our oath we be tyed to the obſervance and defence of ſuch lawes, cuſtomes, rightes, and prerogatives, and providently willing to revoke ſuch thinges to their owne ſtate which be ſo improvidently done, upon conference and treatiſe thereupon had with the Earles, Barons, and other wiſe men of our ſaid realme, and becauſe we never conſented to the making of the Statute, but as then it behoved*

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us we diſſimuled in the premiſſes, by proteſtations of revocation of the ſaid ſtatute if indeed it ſhould proceed, to eſchew the dangers which by the denying of the ſame, we feared to come, forasmuch as the ſaid Parliament otherwiſe had beene without diſpaching any thing in diſcord diſſolved, and ſo our earneſt buſineſſe had likely beene ruinated, which God prohibite. and the ſaid pretenſed ſtatute we promiſed then to be ſealed. It ſeemed to the ſaid Earles, Barons, and other wiſe men that ſithence the ſtatute did not of our free will proceede, the ſame be voyd and ought not to have the name nor ſtrength of a ſtatute; and therfore by there counſell and aſſent we have decreed the ſayd ſtatute to be voyd, and the ſame in as much as it procedeed of deede, we have agreed to be adnulled; willing nevertheleſſe that the articles conteined in the ſaid pretenſed ſtatute, which by other of our ſtatutes or of our progenitours Kings of England have beene approved, ſhall according to the forme of the ſayd ſtatute in every pointe, as convenient is, be obſerved: and the ſame we doe onely to the conſervation and reintegration of the rightes of our crowne, as we be bounde, and not that we ſhould in any wiſe grieve or oppreſſe our ſubjects, whome we deſire to rule by lenity and gentlneſſe. And therefore we do command thee that all theſe thinges thou cauſe to be openly proclaimed in ſuch places within thy Bailiwicke where thou ſhalt ſee expedient, witneſſe my ſelfe at Weſtminſter the firſt day of october the fifteenth yeare of our reigne.

Thirdly, allegiance or ligeance (I ſpeake not of feudall but naturall ligeance) is another right of ſoveraigntie due only to ſupreame Rulers and Governours; A coordinate magiſtrate who hath but a parcell and ſhare of authority, can not alone challenge all obedience from the people, for all that are coordinate and have their ſhares in the rightes of ſoveraigntie joyntly taken together make up but on ſupreame head to whom only allegiance or ligeance is due, for as the ligatures or ſtringes do knit together the joyntes of all the partes of the body, ſo doth ligeance joyne together the ſoveraigne and all the ſubjects, *quaſi uno ligamine*. Now that allegiance or ligiance is due to the *K*ing and onely to the *K*ing will appeare by ſeverall Acts of Parliament. In the firſt yeare of *K*ing Iames, the Lords and Commons declared, that both the ancient and famous Realmes of England and Scotland were united in allegiance and loyall ſubjection in his royall perſon, to his Majeſty and his poſterity for ever; In 34. H. 8. cap. 1 and 35. H. 8. cap. 3. &c. the *K*ing is called the liege Lord of his ſubjects: and in the Acts of Parliament of 13. R. 2. cap. 5. and 11. R. 2. cap. 1. 14. H. 8. cap. 2. &c. ſubjects are called the *K*ings liegepeople. By other Acts of Parliament divers oathes have been framed and given to the people, the contents and effects whereof were, that they ſhould beare all faith and allegiance to the King and his heires: In the ſixe and twenty yeare of Henry the eight an oath was taken

Coke in Calvins caſe lib. 7.

1. Iac. cap. 2.

taken by all the Kings ſubjects for the ſurety of the ſucceſſion of the crowne of England, the oath was this; *Ye ſhall ſweare to beare faith, truth, and obedience all onely to the Kings Majeſty and to the heires of his body of his moſt deare and intirely beloved lawfull wife Queene Anne begotten and to be begotten. and further to the heires of our ſayd ſoveraigne Lord according to the limitation in the ſtatute made for ſurety of his ſucceſſion in the crowne of this realme mentioned and conteined, and not to any other within this Realme, nor forraine Authority, or Potentate, and in caſe any oath be made, or hath beene made by you to any perſon, or perſons, that then ye repute the ſame as vaine, and adnihilate, and that to your cunninge, witte, and utmoſt of your power, without guile, fraude or other undue meane, ye ſhall obſerve, keepe, maintaine, and defende, the ſaid act of ſucceſſion and all the whole effects and contents thereof, and all other acts and ſtatutes made in confirmation, or for execution of the ſame, or for any thing therein conteyned. And this ye ſhall do againſt all manner of perſons, of what eſtate, dignity, degree, or condition ſoever they be. And in no wiſe do or attempt, nor to your power ſuffer to be done or attempted, directly, or indirectly, any thing or thinges, privately or appertly to the let, hinderance, damage, or derogation thereof, or of any parte of the ſame, by any manner of meanes or for any manner of pretence; ſo helpe you God, and all Saintes, and the holy Evangeliſts.* There are two thinges obſervable in

26. H 8. cap 2.

this oath, first, that they sweare *inclusivè* to beare all faith, truth and obedience, to the King Majesty and his heires, and onely to them; Secondly that they sweare *exclusivè* to beare faith, truth, and obedience, to no other eyther within the realme or without, not to other *persons*, nor to other *authority*, by both which clauses of the oath it appears, that the King, and none but the King, can challenge faith and allegiance from the people. Afterwards in the eight and twenty yeare of King Henry the eight the like oath was injoyned to be taken by all his subjects touching his succession by Queen Iane, for the former Act touching his succession by Queene Anne was repealed, but the oath injoyned was otherwise the same; And in the five and thirty year of his reigne an other oath was framed, wherein, besids the contents of the former touching allegiance due to the King and his heires, some other additions were inserted touching his supreamacy in Eccleſiasticall causes: becauſe the former oaths were not thought full enough to that effect and purpose; And these oathes were extraordinary and imposed by speciall appointment: But besyds these there is an other ordinary oath of Allegiance which was first instituted by King Arthur, and is mentioned amongst the lawes of King Edward, and confirmed by the lawes of William the Conquerour; this oath continueth still in force and should by the law be given in every Leete. The order and forme of it appeareth in Britton who wrotte in the reigne of Edward the first, and com-

28. H. 8. cap. 7.

1. 35.

1. 59.

compiled a booke of the Statutes and lawes which were then in uſe ; the effect of it is this : *You ſhall ſweare, that from this day forward you ſhall be true and faithfull to our ſoveraigne Lord the King and his heires, and truth and faith ſhall beare of life and member and terrene honour, and you ſhall neyther know nor heare of any ill or damage intended unto him, that you ſhall not defende ſo helpe you almighty God.* By this it is cleare enough that allegiance is due to the King : the two houſes on the other ſide are ſo farre from having authority to exact allegiance from the people that they are bound themſelves by law to take the oath of Allegiance before they be admitted to ſit in the houſe ; and having every one ſingly taken the ſayd oath at his firſt admittance into the houſe, how they ſhould collectively taken by ſitting together be abſolved, none but the pretended Parliamentarians themſelves can underſtand, whoſe common practice hath beene to play with oathes as children play with toyes and trifles, ſeeming rather to make them their paſtime, then to eſteeme them religious acts, or ſacred obligations.

Coke lib. 7. in Calvins caſe.

Fourthly to pardon the tranſgreſſion of the lawes to remit treaſon, murder, felonie, manſlaughter ; to appoint ſubordinate Iudges ; to make leagues with forraine Princes and States, all theſe are rightes of ſoveraigntie ; and all theſe are declared and determined by the Statutes of the lande to belonge to the Kings Majeſty. Firſt the power of pardoning the

the transgressions of the law and of remitting treason, murder, felonie, manslaughter, and such like offences is declared and determined to be in the Kings Majesty by a Statute made in the twenty seventh yeare of Henry the eight. *Where divers of the most ancient prerogatives and authorities of Iustice appertaining to the imperiall crowne of this realme have beene severed and taken from the same by sundry giftes of the Kings most noble progenitours, Kings of this realme, to the great diminution and detriment of the Royall estate of the same, and to the hinderance and great delay of justice, for reformation whereof be it enacted by authority of this present Parliament, that no person or persons of what estate or degree soever they be of, from the first day of Iuly which shall be in the yeare of our Lord God 1536. shall have any power or authority to pardon, or remit any treasons, murders, manslaughters, or felonies, or any utlaries for any such offences aforesaid, committed, perpetrated, done, or divulged, or hereafter be committed, done or divulged by or against any person or persons in any parte of this realme, Wales, or the marches of the same; but that the Kings highnesse his heires and successours Kings of this realme shall have the whole and sole power and authority thereof united and kint to the imperiall crowne of this realme, as of good right and equity it appertaineth any grantes, usages, prescription, act, or acts of Parliament, or any other thing to the contrary hereof not-*

27. H. 8. cap. 24.

notwithſtanding. Secondly the power of appointing ſubordinate judges is declared and determined to be in the King by the ſame ſtatute. *And be it alſo enacted by authority aforeſaid that no perſon or perſons of what eſtate degree or condition ſoever they be, from the ſayd firſt day of Iuly ſhall have any power or authority to make any juſtices of Eire juſtices of aſsize, Iuſtices of peace or juſtices of Goale delivery: but that all ſuch officers and miniſters ſhall be made by letters patents under the Kings great ſeale, in the name and by authority of the Kings highneſſe and his heires Kings of thiſe realme, in all ſhires, counties, counties Palatine, and other places of thiſe realme, Wales, and the marches of the ſame, or in any other his dominions, at their pleaſure and wills in ſuch manner and forme as juſtices of eire, juſtices of aſsiſe, juſtices of peace and juſtices of goale delivery be commonly made in every ſhire of thiſe realme, any grants, uſages, preſcription, allowance, act or acts of Parliament, or any other thinge or thinges, to the contrary thereof notwithſtanding*. Thirdly the power of making leagues with forraine Princes and States is declared to be in the King by a Statute mad in the fourteenth yeare of Edward the fourth which beginne thus. *Whereas divers and great offences and attempts have now of late beene done and committed againſt the amities and leagues made betwixt our ſaid ſoveraigne Lord the King and ſtrainge Princes*. By this beginning of the Statute it is manifeſt that the 14. E. 4. cap. 4.

power of making leagues and contracting alliance with forraine eſtates is a right belonging onely to the crowne. I could yet adde divers other acts of Parliament to confirme this and all the other particulars above named, but I ſuppoſe theſe which are allready alledged are more then ſufficient. there are alſo other rightes of ſoveraigntie which I could ſhew by the ſtatutes to be in the King, but becauſe there is no conteſtation about them I will uot fight with a ſhadow; thoſe above mentioned are the chiefeſt and inſeperable from Majeſty.

CHAP.

CHAP. IV.

The Kings ſupreamacy in generall ſhewed by the Common law.

HAving ſhewed the Kings ſupreamacy from the Statutes, I come now to the Common law, which is the grounde and foundation of it; for Statutes are but declarations of the royall power, the power it ſelfe with the ſeverall modifications and qualifications of it is more ancient then any ſtatute, and can not be limited or reſtrained by an Acte of Parliament in any thing that tends to the derogation or diminution of Majeſty: for the Engliſh Monarchy by the Common law is an abſolute Monarchy ſuſceptible of no alteration in the rightes and preheminences of Majeſty.

First I say the Englisʃh Monarchy is an abʃolute Monarchy by the Common law admitting no mixture in the rightes of ſoveraigntie, the King alone being the onely ſupreame head and governour having none ſuperiour to him or coordinate with him eyther ſingly or collectively taken. this is expreſly determined in Sir Edward cokes reportes who hath beene cryed up by the pretended Parliamentarians for the oracle of the law, as being no wayes guilty of too much affection to prerogative: the wordes of the reporte are theſe. *If that Acte of the firſt yeare of the late Queene, had never been made it was reſolved by all the judges that the King or Queene of England for the time being may make ſuch an eccleſiaſticall commiſſion as is before mentioned by the ancient prerogative and law of England. And therefore by the ancient lawes of this realme this Kingdome of England is an abſolute empire and Monarchy conſiſting of one heade which is the King and of a body politique compact and compounded of many and almoſt infinite ſeverall and yet well agreeing members; all which the law divideth into two generall partes, that is to ſay the clergy, and the laytie, both of them next and immediatly under God ſubject and obedient to the head; alſo the Kingely head of thiſe Politique body is inſtituted and furniſhed with plenarie and intire power, prerogative, and juriſdiction to render juſtice and right to every part and member of thiſe body of what eſtate degree, or calling ſoever*

Coke. lib. 5. in Caudreys caſe.

ſoever, in all cauſes Eccleſiaſticall or temporall otherwiſe he ſhould not be a heade of the whole body. This is further proved by Sir Edward Coke by divers preſidents and Acts of Parliament, who concludeth his reporte after this manner. *Thus hath it appeared as well by the ancient common lawes of this realme, by the reſolutions and judgements of the judges, and ſages of the lawes of England in all ſucceſſion of ages, as by authority of many acts of Parliament ancient and of later times, that the Kingdome of England is an abſolute Monarchy, and that the King is the onely ſupreame governour as well over Eccleſiaſticall perſons and in Eccleſiaſticall cauſes as temporall within this realme; to the due obſervation of which lawes both the King and the ſubject are ſworne.* Fol. 40. 6.

Bracton ſayth as much in effect, although he calleth not the Engliſh Monarchy an abſolute Monarchy in expreſſe tearmes. *Sicut Dominus Papa in Spiritualibus ſuper omnibus habeat ordinariam juriſdictionem, ita habet Rex in Regno ſuo ordinariam in Temporalibus, & pares non habet neque ſuperiores.* As the Pope hath ordinary juriſdiction over all in Spirituall cauſes; ſo hath the King in his Kingdome in Temporall, and he hath none coordinate with him, or ſuperiour to him. Bracton ſpeaketh not here of particular men, but of the people collectively taken; he ſayth the King is over all, and he compareth his temporall juriſdiction with the Spirituall juriſdiction of the Pope, which in his time was acknowledged in Eng- Lib. 1. cap. 15.

land to extende *ad universos*, as well as *ad singulos*, as it is now in all other places where it is acknowledged.

In the second yeare of King Iames in Hillary tearme letters being directed to the judges to have their resolution concerning the validity of a grant made by Queene Elizabeth under the great seale, of the benefit of a penall Statute; in which grant power was given to the Lord Chancellor or keeper of the great seale, to make dispensations when and to whome he pleased, after great deliberation it was resolved, that when a Statute is made by Acte of Parliament for the publique good, the King could not give the power of dispensation to any subject, or grant the forfeitures upon penall lawes to any before the same be recovered and vested in his Majesty by due and lawfull proceedings: and the reason their alledged is because the King as head of the commonwealth, and the fountaine of justice and mercy, ought to have these rightes of soveraigntie annexed onely to his Royall person. *Car quant un statute est fait pro bono publico & le Roy (come le teste del bien publique & le fountaine de justice & mercie) est par tout le realme trust ove ceo cest confidence & trust est cy inseparablement adjoyne & annexe al Royall person del Roy in cy haut point de soveraigntie, que il ne poit transferre ceo al disposition on poiar d'ascune privat person on al ascune privat use.* For when a statute is made for the publique good and

Coke lib. 7. tit. penall. Statutes.

the

the King (as head of the commonwealth and the fountaine of juſtice and mercy) is by all the Realme truſted vvith it, that confidence and truſt is ſo inſeperably annexed to the Royall perſon of the King in ſo high a point of Soveraigntie that he can not transferre it to the diſpoſition or povver of a private perſon or to any private uſe. I ſhal not need to explaine and amplify the matter by arguments and inferences dravvne from theſe reportes for the vvordes are cleare of themſelves, and do expreſly declare and reſolve the Monarchy of England to be an abſolute Monarchy, the King alone to be the only ſupreame head and governour of the vvhole body, that is of all the people, as vvell collectively as ſeverally taken.

And hence it is, (namely in regard of the Kings ſupreamacy he being the onely head of the Kingdome, having no equall or ſuperiour but God alone, vvhoſe Vicegerent he is upon earth) that the common lavv doth by vvay of fiction and ſimilitude attribute unto him the Divine perfections. Finch lib. 2. del ley. cap. 1. *Roy eſt le teſt del bien publike, immediate deſouth Dieu, deſuis touts perſons & en touts cauſes: Et pur cebentant que il reſemble le perſon del Dieu, & port ſon image enter homes le Ley attribute a lui en un ſimilitudinarie manner, l'ombre del excellencies que ſont en Dieu, ceſt aſcavoir SOVERAIGNTIE, tout terre eſt tenu de luy: nul action giſt vers luy car quis commmandra le Roy?* 1. H. 7. 10. 7. E. 4. 17. 21. H. 7. 2.

Coke 7. fol. 7. B. 43. El. coke 5. fol. 114. B. 4 E. 6. 31. 5. E. 4. 7. 2. H. 4 7. 1. H. 7. 19. 35. H. 6. 26. 10. El. 331. 35. H. 6. 61. 4. El. 246.

Roy ? POYAR, il poit commaunder ſes ſubjects daler hors de Realme en gueer : poet faire aſcune foreine coine currant icy per ſes Proclamations. MAIESTY, ne poet prend ne departer ove aſcune choſe forſque per matter de record ſi non ſoit chattell ou tiel quia de minimis non curat lex. INFINITENES en un manner, eſteant preſent en touts ſes courts, ſi come home poet dire en cheſcun lieu. PERPETVITY ayant perpetuell ſucceſſion, & ne unque mor. PERFECTION, car nul laches, follie, infancie, ou corruption del ſank eſt judge en lui. VERITY, ne ſerra unque eſtoppe. IVSTICE, ne poet eſſe diſſeiſor, ne fairre aſcun tort. The King is head of the commonvvealth immediatly under God, over all perſons, and in all cauſes; and therefore becauſe he repreſents the perſon of God, and bears his image, the lavv attributeth unto him in a ſimilitudinary manner a ſhadovv of Divine excellencies; namely SOVERAIGNTIE, all lands are houlden of him, no action lieth againſt him for vvho ſhall command the King? POWER, he may command his ſubjects to go out of the Realme to vvarre. he may make any forraine coyne currant here by his Proclamations: MAIESTY, he can neyther take nor parte vvith any thing vvithout matter of record, except it be chattell or ſuch like, becauſe the lavv regard not ſuch ſmall matters. INFINITENESSE after a Manner, being preſent in all his courtes, and

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as it were in all places. PERPETUITIE, having perpetuall ſucceſſion and being not ſubject to dy; PERFECTION, for no laches, follie, infancy, or corruption of blood can be judged in him; TRUTH, he can not be eſtopped. IUSTICE, he can not be a diſſeiſor, or do any wrong. Theſe divine excellences which the lawe ſuppoſeth to be in the *King* are not by law alſo ſuppoſed to be in the two houſes, becauſe they repreſent not the perſon of God, but the perſons of the people, whoſe deputies and Lieutenants they are, and not the deputies and Lieutenants of God.

There are alſo divers prerogatives and priviledges by the common lawe belonging to the *King*, and divers Actes which the *King* may doe, or not doe, by reaſon of his Supemacy: The *King* ſhall not in his writ give any man the Stile or Title of *Dominus* becauſe it is unbeſeeming his Majeſty to uſe that tearme to any, he being him ſelfe *omnium ſubditorum ſupremus Dominus*, the ſupreame and ſoveraigne Lord of all his ſubjects: and in this caſe although there be variance betweene the writ and obligation, or other ſpecialty, yet the writ ſhall not abate, which it ſhall in other caſes, as if they vary in the name, or ſurname, or if they vary in the ſumme. 8 E. 6. 23. B. 11. E 4 2. 8. E. 4. 2.

The King can hould lande of no man, becauſe he can have no ſuperiour, but on the other ſide all landes ether immediatly or mediatly are houlden of him as ſoveraigne Lord: for although a man hath a Af. pl. 1. 18 Elizab. 498.

perpetuall right in his estate, yet he hath it in the nature of a fee; and whether it cometh to him by descent, or purchase, he oweth a rent or duty for it: and therefore when in pleading a man would signify himselfe to have the greatest right in his estate, he sayth, *Que il est ou fuit seise de ceo en son demesne come de fee*, that he is or was seised thereof in his demeasne as of fee; and if a man houlds his estate immediatly of the King, as of his crowne or Person, this tenure is called a tenure *in capite*, because he houlds it of the supreame *head* of the commonwealth.

Littleton fol 3.

If a man houldeth lande both of the King and other inferiour Lordes whereby his heire becometh a warde, the King alone shall have the custody both of the heire and land, the reason which is rendered in lawe is because the King can have none coordinate with him, or superiour to him. *Glanvil. lib.7. cap.10. Si quis in Capite de Domino Rege tenere debet, tunc ejus custodia ad Dominum Regem plene pertinet: sive alios Dominos habere debeat ipse hæres, sive non, quia Dominus Rex nullum habere potest parem, multo minus superiorem.* If any man houldeth lande of our Lord the King *in capite*, then his wardshipe shall wholly belonge to our Lord the King, whether he hath other Lordes or not, because the King can have no equall, much lesse a superiour. Bracton. lib.2. cap.37. *Si aliquis hæres terram aliquam tenuerit de Domino Rege in Capite, sive alios*

Dominos

Dominos habuerit, ſive non, Dominus Rex aliis præfertur in cuſtodia hæredis, & ſive ipſe hæres ab aliis prius fuerit feofatus, ſive poſterius, cùm Rex parem non habeat nec ſuperiorem in regno ſuo; If an Heire houldeth lande of our Lord the *King* whether he hath other Lordes or not our Lord the *King* ſhall have the wardſhipe of the heire, whether the heire were firſt or laſt infeofed by others, becauſe the *King* hath no equall, or ſuperiour in his *King*dome: The lawe is the ſame as well for whole Societies, Incorporations, and collective bodies, as for Particular men; if a man ſhould make the two houſes his heire leaving them landes houlden of them by knights ſervice, if the ſame perſons held alſo of the *King in capite* by knights ſervice, the *King* alone ſhould have the wardſhipe and cuſtody of the heire and land, though firſt infeofed by the others; and if the reaſon in law of this prelation be, becauſe the *King* hath neyther equall nor ſuperiour, as is alledged by *Bracton*, and *Glanvil*, it followeth then, that the two houſes collectively taken are neyther ſuperiour nor yet coordinate with the King.

By the common lawe there lyeth no action or writte againſt the *King*, but in caſe he ſeiſeth his ſubjects landes, or taketh away their goods, having no title by order of law, petition is all the remedy the ſubject hath, and his petition is called a petition of righte: The reaſon which is given in lawe for this 21. H. 7 2.

Stanford in his exposition of the Kings Prerogative cap 22.

is becauſe the King is ſupreame and accountable to none but God. Bracton lib. 1. cap. 8. *Non debet eſſe major eo*, (I. e. Rege) *in regno ſuo in exhibitione juris, minimus autem eſſe debet vel quaſi in judicio ſuſcipiendo ſi petat; Si autem ab eo petatur (cum breve non currat contra ipſum) locus erit ſupplicationi quod factum ſuum corrigat & emendet, quod quidem ſi non fecerit, ſatis ſufficit ei ad pœnam quod Dominum expectet ultorem. Nemo quidem de factis ſuis præſumat diſputare, multo fortius contra factum ſuum venire.* There ought not to be in his Kingdome a greater then he *(that is, then the King)* in the exhibition of lawe, but he ought to be the leaſt, or as it were the leaſt in receiving judgement if he deſire it. But if it be deſired of him (becauſe no vvrite lyeth againſt him) there ſhall be place for petition that he would correct and amend his deede, which if he refuſe to doe, it is ſufficient for his puniſhment that he may expect God a revenger, for no man muſt preſume to diſpute of his fact, much leſſe oppoſe and reſiſt it. And againe *lib. 4. cap. 10. Item inter cætera videndum eſt quis ſit ille qui dejecit, Princeps ſ. ex potentia, vel aliquis pro eo, vel nomine ſuo, vel Iudex qui male judicaverit, vel privata perſona. Si autem Princeps, vel Rex, vel alius qui ſuperiorem non habuerit niſi Dominum, contra ipſum non habebitur remedium per aſſiſam, immo tantum locus erit ſupplicationi, ut factum ſuum corrigat & emendet, quod ſi non fecerit, ſufficiet ei pro pœna quod Dominum ex-*

expectet ultorem. It is alſo to be conſidered who it is that diſſeiſeth, whether the *King* by his power, or ſome other in his name, or a Iudge who judgeth unjuſtly, or a private perſon. If it be the *King*, or any other, who hath no ſuperiour but God, there ſhall be no remedy had againſt him by aſſiſe, onely there ſhall be place for petition, that he would correct and amende his deede, which if he refuſeth to doe, it is ſufficient for his puniſhment, that he may expect God a revenger. This is all the helpe which a ſubject hath againſt the *King*, becauſe he is ſupreame, and bound to give an account af his actions to none but God, and this is the courſe which the two houſes of Parliament are to take by law in caſe the King infringeth or is ſuppoſed to infringe the rightes and liberties of the people, as will appeare by divers petitions of right exhibited in former Parliaments.

Secondly I ſay, the Engliſh Monarchie by the common lawe is ſuſceptible of no alteration in the rightes and preheminences of Majeſty; I meane by any Act of Parliament, or by any agreement of *King* and people: what a conqueror in a juſt warre, or what the people may doe in caſe the bloode Royall, which God prohibite, ſhould be extincte, is not now diſputable: but ſo long as there remains a *King*, or heire apparent to the crowne, the rights and preheminences of Majeſty can by no act, agreement, ſtipulation, or covenant

made betweene King and people be ſevered and taken from the crowne; ſhould the King unwarily by Acte of Parliament conſent to any thing prejudiciall and derogatory to his Royall prerogative, ſuch Actes are voyd by the common law, and the Iudges (being bounde by oath to aſſent to nothing that may turne to the Kings hinderance or dammage) are bounde to declare them ſo, and have done it *de facto* upon ſeverall occaſions. By a Statute made the twenty third yeare of Henry the ſixt it is ordained that no man ſhall continue Sheriffe of a Shire above one yeare, and that all patents from the King of that office, for tearme of yeares, of life, in fee ſimple, or in fee taile ſhould be voide any clauſe or worde of *non obſtante* in any wiſe put or to be put into ſuch patents to be made notwithſtanding; now this Statute ſo farre as it ſtriks at the Kings prerogative is by the Iudges of the land declared to be voyd, contrary to the expreſſe purview of that Acte, and all Kings ſince might with a clauſe of *non obſtante* againſt the manifeſt ſence and wordes of that Statute have granted that office for life in taile, or in fee. Finch. lib. 2. fol. 22. *Roy poet licencer choſes prohibite per eſtatute, come a coyner argent que eſt fait felonie per un eſtatute, & devant ceo fuit loyall a faire, car ceo eſt forſque malum prohibitum: mes malum in ſe, come a levier un nuſance en le haut chemine. Roy ne poet licence home a faire; mes apres que eſt fait il poet ceo perdoner. Mes ſi*

23 H. 6. cap. 8.

2. H. 7. Coke lib. 7. fol. 14.

11 H 7. 11. lib.

ſi leſtatute dit, que ſon licence ſerra voyd, la le licence aver' un clauſe de non obſtante, ceſt aſſavoir, dirr non obſtante aſcune eſtatute al contrarie, ou autermẽt neſt bone: come le Statute 33. H.6. cap. 18. eſt, que grant del Roy deſte vicount del aſcun countie pluis longement quam per un an ſerra voyd; nient obſtant que ſon patent aver un clauſe de non obſtante: uncore ove un cauſe de non obſtante, tiel patent, ſerra bone.

The King may licence thinges prohibited by Statute, as to coyne ſilver, which is made felonie by Statute, but was lawfull before, for that is evill onely becauſe it is forbidden, but that which is evill in it ſelfe, as to levie a nuſans in the high waye, the King can not licence a man to doe that, but he may pardon it after it be done. But if the Statute ſay, his licence ſhall be voyd, there the licence ſhall have a clauſe of *non obſtante*, viz. it ſhall ſay any Statute to the contrarie notwithſtanding. or otherwiſe it is not good: As the Statute 23. H. 6. cap. 18. is, that the grant of the King to be Sheriffe of a Shire longer then a yeare, ſhall be voyd, notwithſtanding his patent ſhall have a clauſe of *non obſtante*, and yet with a clauſe of *non obſtante* ſuch a patent ſhall be good. So likewiſe the King hath a power to diſpence with penall Statutes, and if ſuch diſpenſations ſhould be prohibited or made voyd by Acte of Parliament, yet with a clauſe of *non obſtante*, they ſhall be good, althongh it ſhould be provided in expreſſe Coke lib. 7. 17.

tearmes

tearmes that ſuch diſpenſations notwithſtanding the ſayd clauſe ſhould be of none effect. By divers Statutes it hath beene enacted, that no charter of pardon of the death of a man nor of other felony ſhould be granted; yet all theſe Statutes are by the common law made voyd, becauſe they cut off parte of the Kings prerogative: for it is againſt reaſon, that the fountaine of mercy ſhould by an Acte of Parliament be dried up, although Kings ought to make uſe of theire prerogative but ſparingly in that particular, vvhen they meet vvith a fit object of mercy, and not in caſes vvhere the lavv of God command execution of juſtice, or in ordinary caſes, vvhereby offendors may be incouraged. So likevviſe to grant letters patents of Denization is eſteemed by the common lavv inter *jura Majeſtatis & inſignia ſummæ poteſtatis*, and is ſo inſeperably and individually annexed to the Royall perſon of the King as it can not be divided from it. That which I have hitherto ſayd of the rightes and preheminences of Majeſty, is to be underſtood of thoſe rightes and preheminences that are ſo eſſentiall to it, as they can not be ſeparated vvithout the diminution or deſtruction of Majeſty. As the power of the militia, the power of making lawes, the power of appointing Iudges, and ſuch like Actes of juriſdiction, as alſo the power of diſpenſing with penall Statutes, the power of pardoning the tranſgreſſions of

2. E. 3. cap. 2. 4 E. 3. cap. 13 14. E. 3. cap. 14.

Stanford lib 2. 101.

20. H. 7. 8.

Coke in Calvins caſe.

of the law, the power of profecuting the law, and ſuch like ſupreame actes of juſtice and mercy: ſome of which rightes and preheminences can not be taken away without giving a wounde, others not without bringing death, and diſſolution to Majeſty: yet there are other rightes and preheminences that are called priviledges, which are not ſo eſſentiall to Majeſty, but that thy may by ſpeciall grace of the King be ſeperated. *Bracton. lib. 2. cap. 24. Ea vero quæ juriſdictionis ſunt & pacis & ea quæ ſunt juſtitiæ & paci annexa ad nullam pertinent niſi ad Coronam & dignitatem Regiam, nec à Corona ſeperari poterunt cum faciant ipſam Coronam. Ea vero quæ dicuntur Privilegia, licet pertineant ad Coronam, tamen à Corona ſeparari poſſunt & ad privatas perſonas transferri, ſed de gratia ipſius Regis ſpeciali.* Thoſe thinges which belonge to juriſdiction and peace, and thoſe which are annexed to juſtice and peace pertaine to none but the crowne, neyther can they be ſeperated from it becauſe they make the Crowne: But thoſe which are called Priviledges, although they pertaine to the Crowne, yet they may be ſeparated from it and transferred to private perſons, but not without the ſpeciall favour of the King. It may ſeeme ſtrainge that the King and the Lords Spirituall and Temporall, and the houſe of Commons, which are virtually the whole kingdome, ſhould not have power to make what lawes they pleaſe, and to binde themſelves and the whole king-

dome by them in thinges not repugnant to the law of God ; yet if we conſider the grounde of this reſtrainte, we ſhall finde it reaſonable : for they which lay the firſt foundation of a commonwealth, have authority to make lawes that can not be altered by poſterity in matters that concerne the rightes both of *K*ing and people : for foundations can not be removed without the ruine and ſubverſion of the whole buildinge : As for example, the diviſion of thinges which is made at the firſt foundation of a commonvvealth (vvhether the people tooke the country they divide from the inhabitants by conqueſt in a juſt vvarre, or vvhether they did firſt actually poſſeſſe it themſelves as being before emptie and vacant) can not be altered by poſterity, and a nevv diviſion made vvithout manifeſt injuſtice. The lavves vvhich they then make for the preſervation of their right and proprietie in the ſayd diviſion, can not be diſanulled by ſucceding Parliaments, nor can any particular man be deprived of his inheritance, vvhich deſcend unto him by vertue of that diviſion, or of any parte or parcell, or appurtenances thereof, by any contrary lavv vvhich ſhall be made by them ; I ſpeake not vvhat Parliaments may do by force, but vvhat they may juſtly doe ; for they have not ſuch an arbitrary povver, but that they are alvvayes in a morrall ſubjection to the rules of juſtice and naturall equity. And in this caſe the *K*inges condition ought not to be vvorſe then the peoples,

peoples, but his ſhare and rightes in the ſaid diviſion are as firmely and unchangeably to be preſerved, as the ſhare and rightes of particular men : And both the *King* and people are obliged to this, not onely by the rules of juſtice, and naturall equity, but by oath, and by the municipall lawes of the lande, to which they are both ſworne. That the *King* is bound to this, appeares by the lawes of *King* Edward. *Debet vero de jure Rex omnes terras, & honores, omnes dignitates, & jura, & libertates coronæ regni hujus in integrum cum omni integritate & ſine diminutione obſervare & defendere; diſperſa & dilapidata & amiſſa regni jura in priſtinum ſtatum & debitum viribus omnibus revocare.* The King ought by right to maintaine and defende all the landes, honours, dignities, rightes and liberties of the crowne, intirely without diminution; and by all means to recall againe thoſe rightes which are loſt and ſeparated from the crovvne. That the people are bound to this, appears likevviſe by the lawes of *King* Edvvard, and of William the Conquerour, vvho did a little inlarge the lavves of *King* Edvvard in this parcular. *Statuimus etiam & firmiter præcipimus ut omnes liberi homines totius regni noſtri prædicti ſint fratres conjurati ad Monarchiam & ad Regnum noſtrum pro viribus ſuis & facultatibus contra inimicos pro poſſe ſuo defendendum, & viriliter ſervandum, & pacem & dignitatem coronæ noſtræ integram obſervandam, & ad judicium rectum & juſtitiam conſtanter omnibus*

l. 17.

l. 35.

l. 59.

bus modis pro posse suo sine dolo & sine dilatione faciendam. Hoc decretum sancitum est in civitate London, vve vvill and commande that all free men of our Kingdome be svvorne brothers to defend and keepe our Monarchy and Kingdome according to their povver againſt the enemies of the ſame, and to maintaine the peace and dignitie of our crovvne intire, and to exerciſe right judgement, and juſtice according to their povver vvithout deceit and delay. This decree vvas enacted in the city of London. By the civill lavv alſo the rightes of Soveraignitie can not be ſeparated from the Prince, and the reaſon alleadged is, becauſe they are eſſentiall to Majeſty. *Suprema jurisdictio et potestas regia, etsi Princeps velit, a se separari non possunt, sunt enim ipsa forma et substantialis essentia Majestatis, ergo manente ipso Rege ab eo abdicari non possunt. Cabedo practic. observ. par. 2. decis. 40. n. 8. Io. Andr. in addit. ad specul. tit. de jurisdict. c. Cum Marthæ. de celebrat. Missar.* Supreame juriſdiction and Kingly povver can not be ſeperated from the Prince although he vvould himſelfe, for they are eſſentiall to to Majeſty, and can not be abdicated vvhilſt he remaineth King.

CHAP.

CHAP. V.

The Kings ſupreamacy in particular ſhewed by the Common law.

I Come now to the particular rightes of Soveraignтie, vvhich are all by the Common lavv wholely in the power of the *King*. Firſt, the militia is his by the Common law, and to him it onely perteineth, to make warre with forraine Princes and Eſtates; as alſo to maintaine the peace, to ſuppreſſe rebellions, and to ſee juſtice executed at home within his owne *K*ingdome: *Fleta lib.* 1. *cap.* 17. *Habet Rex in manu ſua omnia jura quæ ad coronam et Laicalem pertinent poteſtatem, et materialem gladium qui pertinet ad Regni gubernaculum.* The *K*ing hath all the rightes in his hand which belonge to the

19 E. 4. 6. Coke 7. 25. E.

crowne, and to Temporall jurisdiction, and the power of the sworde, vvhich belonge to the government of the Kingdome. So likevvise saith *Bracton lib.1.cap.8. Sunt et alij potentes sub Rege qui dicuntur Barones, hoc est robur belli, sunt et alij qui dicuntur Vavasores, viri magnæ dignitatis, vavasor enim nihil melius dici poterit quam vas fortium ad ad valetudinem. Sunt et sub Rege milites, s. ad militiam exercendam electi.* There are other great men under the King, vvhich are called Barons, and other vvhich are called Vavasours, men of great dignitie. There are also souldiers under the King chosen to exercise the *militia*. And in the beginning of his booke he saith that it is necessary this povver should be in the King. *In Rege qui recte regit, necessaria sunt duo hæc, arma videlicet et Leges, quibus utrumque tempus bellorum et pacis recte possit gubernari: utrumque enim istorum alterius indiget auxilio, quo tam res militaris possit esse in tuto, quam ipsæ Leges usu armorum et præsidio possint esse servatæ. Si autem arma defecerint contra hostes, rebelles, et indomitos, sic erit regnum indefensum: Si autem Leges, sic exterminabitur justitia.* In a King that governeth vvell, tvvo thinges are necessary, armes and lavves, by vvhich he may be enabled to rule both in times of peace and vvarre; and both these neede the helpe of onanother, vvhereby both armes and lavves may be preserved. If armes be vvanting against enemies, and rebells, the Kingdome shall

ſhall be without defence; if lawes be wanting, without juſtice. This is alſo evident from the Tenures, whereby moſt of the chiefe men in the kingdome hould their eſtates: for all that hould *in capite* by knightes ſervice, are bound for their fee to aſſiſt the King in his warres whenſoever they ſhall be ſummoned by him; whether it be to ſuppreſſe rebellion, or to reſiſt a forraine invaſion. And this hath beene the knowne law of the land ever ſince the the time of William the Conqueror, in the fourth yeare of whoſe reigne this right vvas confirmed unto him by Acte of Parliament: The vvordes of the Statute are theſe. *Statuimus et firmiter præcipimus, ut omnes Comites, et Barones, et milites, et ſervientes, et univerſi liberi homines totius regni noſtri prædicti habeant et teneant ſe ſemper bene in armis, et in equis ut decet et oportet, et quod ſint ſemper prompti et parati ad ſervitium ſuum integrum nobis explendum et peragendum, cum ſemper opus adfuerit, ſecundum quod nobis debent de feodis, et tenementis ſuis de jure facere, et ſicut illis ſtatuimus per commune conſilium totius Regni noſtri prædicti, et illis dedimus et conceſſimus in feodis jure hereditario.* We vvill and command that all Earles, Barons, Souldiers, villeins, and all free men of our vvhole kingdome, be alvvayes vvell provided vvith horſe and armes, as it behoveth them, and that they be alvvayes in a readineſſe to ſerve us as often as need ſhall require according as they are bound by

by their landes and tenements, and as vve have appointed them to doe by the common councell of our vvhole kingdome, and *for that consideration* have given and granted them landes in fee for ever.

Secondly the legislative povver belonge to the King alone by the Common Lavv, the tvvo houses have authority granted them by the King to assent or dissent, but the povver that maks it a lavv the authority that animats it and maks it differ from a dead letter, is in the King, who is the life and soule of the law by whose authority alone the lavves commande, and forbid, and vindicate, and punish offendors. So sayth Bracton lib. 1. cap. 2. *Hujusmodi verò Leges Anglicanæ, et consuetudines, Regum authoritate jubent quandoque, quandoque vetant, et quandoque vindicant et puniunt transgressores.* These Lavves and customes of England by the Kinges authority doe sometimes command, sometimes forbid, and somtimes chastise and punish transgressours. This vvas also resolved by divers Earles and Barons, and by all the justices in the time of Edvvard the third: For one *Haedlow* and his *wife* having a controversy vvith the *King*, and desiring to have it decided in Parliament, a reference being made to divers Earles, and Barons, and to all the justices, to consider of the businesse, it vvas resolved that the tvvo houses vvere not coordinate vvith the King in the Legislativer Povver, but that the

the King alone made lawes by the assent of the two houses, that he had none equall or coordinate with him in his realme, and that he could not be judged by the Parliament. *Fuit dit que le Roy fist les leis per assent des peres & de la commune, et non pas les peres, et le commune: Et que il ne avera nul pere en sa terre demesne, et que le Roy per eux ne doit estr̄ ajuge.* It was resolved that the King make lawes by the assent of the Lordes and Commons, and not the Lordes and Commons: and that he could have no peere in his owne land, and that he could not be judged by them. The Common practice of the lawe confirme this as well as the resolution of the Iudges; for the breach of any Statute whether it be by treason, murther, felony, perjury, or by any other way, is an offence against the Kinges authority alone, and pleas made against such offences are called the pleas of the crowne, becaus they are done *encounter la corone et dignitie le Roy*, against the crowne and dignity of the King. So that it is not the dignity and authority of the Lordes and Commons which is violated by contempt of the law, but the dignitie and authority of the King. He may dispence also with such lawes as forbid a thinge which is not *malum in se*, and pardon the transgression of others, as Treason, Felonie, and the like; which in reason he ought no more to doe, then to dispence with the lawes of *Germany*, or pardon the transgressours thereof, if they were not made by

22. E. 3. 6.

Stanford les plees del corone. lib. 1. cap. 1.

his owne authority. Againe the King calling the Iudges to him, hath a power to interprete the Statutes, and it is an uncontroulable Maxime of Law, *Ejuſdem eſt leges interpretari cujus eſt condere:* None can interpret the lavves, but the ſame povver that make them. I knovv the tvvo houſes have challenged this povver, and voted it a high breach of priviledge for any to queſtion their authority herein: but vve deſire they vvould ſhew us by vvhat lavv they can vvorke ſuch miracles; for the King taking the Iudges to him, have alvvayes had that povver by the lavves of the land: their expoſition upon the Statute of Gloceſter made in the ſixt yeare of Edvvard the firſt is extant amongſt the printed Statutes, and followeth immediatly after the ſayd Statute, in theſe vvordes. *After by the King and his Iuſtices, certaine expoſitions vvere made upon ſome of the articles above mentioned, that is to vvit, to the firſt article, for entries by diſſeiſin, damages ſhall run from the time of the Statute publiſhed. In the ſame vviſe, in vvrits of* entre *upon diſſeiſin and in all vvrits of* Mortdaunceſter. Couſenage, Aiel *or* Beſaiel, *of intruſion by ones owne acte by any manner of vvrite, damages ſhall run after the vvrite purchaſed againſt them that held by Statute, albeit their anceſtors died ſeiſed thereof. Touching an Inqueſt to be made of ſuch as be vvith in age, the Statute ſhall run vvithout limitation of time. Touching alienation of landes houlden by the lavve of England, the Statute ſhall run for ſuch*

ſuch landes being aliened after the time of the Statute publiſhed. In like manner the Statute ſhall extend and run upon the landes of a wife aliened by hir huſband (whereas no fine was levied thereof in court.) Touching landes being let in fee ferme, to pay therefore yearly the fourth parte of the very value thereof, the Statute ſhall run as well unto landes that were leaſed before the making of the Statute, as after, in caſe that the tenant have withhoulden above the ſpace of two yeares after the Statute publiſhed, ſo much as he ſhould have paid to his leaſſor yearly according to the forme of the Covenant. And as to the puniſhment of waſt in all caſes (except it be of dowers and wards) it ſhall be underſtanded of waſts done ſithens the Statute publiſhed. And of the forfeiture of treble in caſes of waſt of dowers, and wardſhips, it ſhall be underſtanded of waſts committed after the Statute publiſhed. And as concerning them which doe alien their dowers, it is to be underſtanded after the publiſhing of the Statute. Given at Glocester the Sunday next after the feaſt of Saint Peter ad vincula, *the ſixt yeare of the reigne of King Edward the firſt*; Here we ſee to whome the interpretation of the law belongeth, the Iudges by themſelves have a power to interpret it *judicialiter*, they could not otherwiſe proceede to judgement; but being, called by the King, with him, and under him, they have a power to interpret it *authoritativè* as hath been the practice, and is the knowne

law of the Lande. But for the two houſes (beſids that they can doe nothing jointly together, unleſſe the King doth actually concurre with them) their ſtructure is ſuch that they are altogether uncapable and unfit to interpret law: For the power that interprete law muſt be alwayes exiſtent, to act as new occaſions ſhall ariſe, which require the exerciſe of that power, which the two houſes are not. And yet were they alwayes exiſtent, both houſes having a negative voyce, upon any diſagreement between them, the interpretation of the law muſt be retarded, and all controverſies depending there upon undecided: and this diſagreement might perhaps endure for ever, and ſo a finall determination in ſuch ſuites would be impoſſible, except they ſhould determine their differences by force, which they have beene often neceſſitated to doe, ſince they have uſurped the power of interpreting law, and ordering the affaires of the Kingdome. Now theſe are inconveniences which ought not to be admitted in any commonwealth: for it derogats both from the honour and wiſdome of a Nation to be ſo moulded and framed, that juſtice can not have a free paſſage in all contingencies. I will yet adde for the further clearing of this pointe, that not onely the legiſlative power it ſelfe, but the very exerciſe of the power alſo, ſo farre as it is eſſentiall to government is in the King alone; for he can by edicts and proclamations provide for all neceſſary occaſions, and ſpeciall emer-

emergencies, not provided for by fixed and certaine lavvs; vvhich is one of the moſt excellent and eminent actes of the legiſlative povver, and a ſufficient remedy againſt all miſchiefes, in caſe the tvvo houſes ſhould refuſe to concurre vvith him in thoſe thinges vvhich concerne the benefit of the Kingdome. He may alſo grant immunities, liberties, and priviledges, to any colledge, tovvne, cittie, or incorporation, and authoriſe the ſayd communities to make ſuch locall ſtatutes as ſhall oblige every member thereof ſo farre as they contradict not the generall Statutes of the Land, vvhich are all actes of the legiſlative povver that he can exerciſe vvithout the concurrence of the tvvo houſes. Novv concerning the Kinges negative voice, it is the knovvne lavv of the land that the King hath a povver of diſſenting, and that no act of Parliament can have any authority except eyther in perſon or under his ſeale he ſignifies his aſſent. This hath been often times reſolved by the juſtices; and if no lavv or cuſtome could be ſhevved for it, yet it is unreaſonable to thinke that the Kinges of England ſhould by agreement vvith the people deveſt themſelves of this authority, and leave the povver of making lavves vvholely to their ſubjects, vvhereby they ſhould have inabled them by lavv to pull the crovvne from off their heades, and ſet it vvhere they pleaſe.

12. H. 7. 10. 4. H. 7. 18. 7. H. 14 judge jenkins fol. 18.

Thirdly allegeance or ligeancy is due to the King, and none but the King by the common lavv, as Sir

Edvvard Coke ſhevveth at large in Calvins caſe from the reſolution of the judges. *By that which hath been ſayd appeareth*, ſayth he, *that this ligeance is due onely to the King ſo as therein the queſtion is not now* cui ſed quomodo debetur. *It is true that the King hath two capacities in him, one a naturall body being diſcended of the blood Royall of the realme, and this body is of the creation of almighty God, and is ſubject to death, infirmity, and ſuch like; The other is a politique body or capacity, ſo called becauſe it is framed by the policy of man (and in the* 21. *E.* 4. 39. *B. is called a miſticall body) and in this capacity the King is eſteemed to be immortall, inviſible, not ſubject to death, infirmity, infancy, nonage, &c. Vide Pl. Com. in le Caſe de Seignior Barclay* 238. *Et in the caſe del duchie* 213. *vide* 6. *E.* 3. 291. *&* 26. *aſſ. pl.* 54. *Now ſeeing the King hath but one perſon and ſeverall capacities, and one politique capacity for the realme of England, and an other for the realme of Scotland, it is neceſſary to be conſidered to which capacity legeance is due, and it was reſolved that it was due to the naturall perſon of the King, which is ever accompanied with the politique capacity, and the politique capacity as it were appropriated to the naturall capacity) and is not due to the politique capacity only, that is to the crowne or Kingdome diſtinct from his naturall capacity.* In the ſame caſe a little after it followeth. *And where divers bookes and Acts of Parliament ſpeake of the ligeance of England*

land as the 31. *E.* 3. *tit. Cosinage* 5. 42. *E.* 3. 2. 13. *E.* 3. *tit. Bre.* 677. 25. *E.* 3. *Statut.* 2. De natis ultra mare. *All these and divers other speaking briefly in a vulgar manner* (for loquendum ut vulgus) *and not pleading* (for sentiendum ut docti) *are to be understood of the ligeance due by the people to the King. For no man will affirme that England it selfe taking it for the continent thereof, doth owe any ligiance or faith, or that any faith or ligeance should be due to it; but it manifestly appeareth, that the ligeance or faith of the subject is* proprium quarto modo *to the King*, omni, soli, & semper.

Fourtly, the power of making Iudges, and all such State officers, as exercise any jurisdiction, is in the King alone by the Common law, and can not, nor ought not to be seperated from him: for it is not reasonable that deligate Iudges should be substituted by any but those whose deligates they are; nor can a King execute justice according to his oath (which next the Glory of God is the chiefe ende of Government) by a naked title onely; His subjects may be vexed by the rapine and exactions of unjust Iudges, they may be wearied by delayes, exhausted by insupportable fees, oppresst many severall wayes, and the King in the meane time must stand still and looke on, being too weake to resist, if his handes be bound, and he disabled from punishing their delinquencies, and deputing others into their places. And therefore this power can not

be

be disunited from the crowne, but ought to be *de jure*, as it hath alwayes beene *de facto*, a part of the Kings prerogative. *Bracton lib. 3. tit. de actionibus, cap. 10. Et si ipse Dominus Rex ad singulas causas terminandas non sufficiat, ut levior sit illi labor in plures personas partito onere, eligere debet de regno suo viros sapientes & timentes Deum, in quibus sit veritas eloquiorum, & qui oderunt avaritiam (quæ inducit cupiditatem) & ex illis constituere Iusticiarios, Vicecomites, & alios Ballivos, & Ministros suos, quibus referantur tam quæstiones super dubijs, quam querimoniæ super injurijs.* And if our Lord the King be not sufficient to determine all controversies him selfe, he ought to selecte wise men, fearing God, and hating covetousnesse, and out of them constitute Iustices, Sherifts, Bailies, and other officers, to whome controversies and complaintes may be referred. The practice of the law hath alwayes beene the same since Bractons time, and all Iudges and chief officers appointed by write, patent, or commission from the King. Hence it is that all patents and commissions of Iudges, and other such officers, determineth by the common law at the Kings death. *Coke tit. discontinuance de proces, &c. part. 7. 30. Al common ley per demise le Roy le plea fuit discontinue, & le proces que fuit agard, & nient returne devant le mort, le Roy fuit perde: Car per le breve del predecessor rien pout estre execute in le temps del novel Roy, si non que il soit in especiall*

cases;

caſes ; car le mort le Roy , non ſolemt les juſtices de lu Bank & de laut, & Barons del exchequer, mes les viconts auxi , & eſchetors , & touts commiſſions de Oyer *& Terminer, Goale delivery, & juſtices de peace , ſont determine per le mort le predeceſſor que eux fiſt.* By the Common law all pleas were diſcontinued by the death of the *King*, and proceſſe awarded and not returned before his death was loſt: for by the writ of the predeceſſour nothing can be executed in the time of the new *King*, except it be in ſome ſpeciall cauſes ; for by the death of the *King* not onely the juſtices of both the benches , and the Barons of the exchequer , but Sheriffs alſo , and Eſcheatours , and all commiſſions of *Oyer* and *Terminer*, Goale delivery , and Iuſtices of peace , are determined by the death of the predeceſſour that made them.

Fiftly , the power of making leagues and contracting alliance, as alſo of making warre , with forraine States is in the King alone. Coke lib. 7. 25. *Leagues between our Soveraigne and others are the onely means to make aliens friends, &* fœdera percutere *to make leagues ; onely and wholely perteineth to the King : warres do make aliens enemies, and* bellum indicere *belongeth onely and wholely to the King , and not to the ſubject , as appeareth in* 19 *E.* 4. *fol.* 6. 6. It hath been reſolved by the Iudges, that if all the people of England collectively taken ſhould breake the league made with a forraine Prince , without the

19. E. 4. 46. 22. E. 4. Fitz. jurisdiction laſt placite. Iudge Ienkins fol. 17.

be disunited from the crowne, but ought to be *de jure*, as it hath alwayes beene *de facto*, a part of the Kings prerogative. *Bracton lib. 3. tit. de actionibus, cap. 10. Et si ipse Dominus Rex ad singulas causas terminandas non sufficiat, ut levior sit illi labor in plures personas partito onere, eligere debet de regno suo viros sapientes & timentes Deum, in quibus sit veritas eloquiorum, & qui oderunt avaritiam (quæ inducit cupiditatem) & ex illis constituere Iusticiarios, Vicecomites, & alios Ballivos, & Ministros suos, quibus referantur tam quæstiones super dubijs, quam querimoniæ super injurijs.* And if our Lord the King be not sufficient to determine all controversies him selfe, he ought to selecte wise men, fearing God, and hating covetousnesse, and out of them constitute Iustices, Sherifts, Bailies, and other officers, to whome controversies and complaintes may be referred. The practice of the law hath alwayes beene the same since Bractons time, and all Iudges and chief officers appointed by write, patent, or commission from the King. Hence it is that all patents and commissions of Iudges, and other such officers, determineth by the common law at the Kings death. *Coke tit. discontinuance de proces, &c. part. 7. 30. Al common ley per demise le Roy le plea fuit discontinue, & le proces que fuit agard, & nient returne devant le mort, le Roy fuit perde: Car per le breve del predecessor rien pout estre execute in le temps del novel Roy, si non que il soit in especiall cases;*

eaſes ; car le mort le Roy , non ſolem̄t les juſtices de l̄u Bank & de laū, & Barons del exchequer, mes les viconts auxi , & eſchetors , & touts commiſſions de Oyer *& Terminer, Goale delivery, & juſtices de peace , ſont determine per le mort le predeceſſor que eux fiſt.* By the Common law all pleas were diſcontinued by the death of the *King*, and proceſſe awarded and not returned before his death was loſt: for by the writ of the predeceſſour nothing can be executed in the time of the new *King*, except it be in ſome ſpeciall cauſes; for by the death of the *King* not onely the juſtices of both the benches , and the Barons of the exchequer , but Sheriffs alſo , and Eſcheatours , and all commiſſions of *Oyer* and *Terminer*, Goale delivery , and Iuſtices of peace , are determined by the death of the predeceſſour that made them.

Fiftly , the power of making leagues and contracting alliance, as alſo of making warre , with forraine States is in the King alone. Coke lib. 7. 25. *Leagues between our Soveraigne and others are the onely means to make aliens friends, &* fœdera percutere *to make leagues ; onely and wholely perteineth to the King : warres do make aliens enemies, and* bellum indicere *belongeth onely and wholely to the King , and not to the ſubject , as appeareth in* 19. *E.* 4. *fol.* 6. 6. It hath been reſolved by the Iudges, that if all the people of England collectively taken ſhould breake the league made with a forraine Prince , without the

19. E. 4. 46. 22. E. 4. Fitz. juriſdiction laſt placite. Iudge Ienkins fol. 17.

Kings conſent, the league houlds, and is not broken. There are yet other rights of Majeſty as the power of Coynage, the power of granting letters patents of Denization, the power of diſpenſing with ſuch lawes, as are diſpenſible, and the power of pardoning the tranſgreſſion of them, with divers others, all which belong to the King by the Common law; but becauſe they are not called in queſtion, I will paſſe them over and conclude this chapter with the teſtimony of Bracton. *Dominus Rex ordinariam habet juriſdictionem, et dignitatem et poteſtatem, ſuper omnes qui in regno ſuo ſunt, habet enim omnia jura in manu ſua quæ ad coronam et laicalem pertinent poteſtatem.* Our Lord the King hath ordinary juriſdiction and dignity, and authority over all that are in the Kingdome, for he hath all the rightes in his hande which belong to the crowne, and to the ſecular power.

lib. 1. cap. 24

CHAP. VI.

The Kings ſupreamacy both in generall and particular ſhewed by reaſons depending upon the lawes and cuſtomes of the Land.

ALthough I eſteeme poſitive lawes and cuſtomes more demonſtrative then deductions and inferences, yet theſe have alſo their weight and importance; I will therefore in the laſt place adde ſuch reaſons as ſhall ſufficiently confirme the Kings ſupreamacy, although the lawes had poſitively declared, or the Iudges reſolved nothing concerning it.

Firſt, that power which is ſo under controule

that it can be annihilated at the will of an other, muſt needs be inferiour to that power which doe ſo overrule and maſter it ; Now ſuch is the condition of Parliaments, that the *King* by lavv can annihilate them at his pleaſure ; for they depend upon him *quoad exiſtentiam* for their exiſtence and continuance : If it ſhould be granted that Parliaments are *in actu ſignato* by originall conſtitution, yet the preciſe time of their exiſtence , and continuance, hath alwayes been at the *Kings* appointment , it being in his power to call them and diſſolve them vvhen he pleaſe. So that they muſt needs be ſubordinate to him and depend upon him for their operation , when they depende upon him for their exiſtence. To this the *reverent Divines*, anſwer, that for
Anſwer. the convention of Parliaments , the State have authority in ſome caſes to meete together in Parliament without a legall warrant from the *King*, as if the *King* be a priſoner in the enemies handes , or diſtracted; and have done it *de facto* in the infancy and minority of ſome Kinges : and for the diſſolution of Parliaments, they ſay that they have heard *wiſe men* affirme, that by lawe a Parliament can not be diſſolved whilſt there are any petitions of grievances , or ſuch matters of importance depending
Reply. and unfiniſhed. What needed the *reverent Divines* to have cited theſe *wiſe men ?* Could they not as eaſily have ſayd themſelves that Parliaments could not be diſſolved by the *Kinges* command , as they

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ſayd they might be called without it ? Perhaps they thought that ſuch notorious falſities would never paſſe currantly amongſt the people, if they were not confirmed by the authority of *wiſe men* as well as by their owne : yet I beleeve the *wiſe men* they ſpeake of were not ſo *wiſe* as *Thales Mileſius*, but whatſoever they were, their magiſteriall dictats muſt not paſſe for law; for both that which theſe *wiſe men* affirme, and that vvhich they affirme *themſelves*, is manifeſtly oppoſit to lavve and truth. There vvas never yet ſince the firſt foundation of the Monarchie a Parliament called vvithout a legall vvarrant from the King, nor can a Parliament be called vvithout it; for the caſes put by them are altogether impertinent, and can not be ſuppoſed : the King according to his politique capacity can not be a priſoner, or an infant, or diſtracted; but in caſe his condition be ſuch as make him uncapable to guide and mannage his charge in perſon, as in caſe of infancy, or diſtraction, the law hath made ſufficient proviſion who ſhall exerciſe the regall power in ſuch occurrencies; if he be a priſoner in the enemies handes he may ſubſtitute others, or if he be ſo cloſely kept as that can non be permitted, in ſuch events alſo the law is not deficient : but in all theſe caſes nothing can be acted by authority inherent in the people, but by the Kings authority, which can never be in priſon, nor is it ſubject to infancy or diſtraction; and Parliaments called at ſuch time, by

thoſe that have authority by law to exerciſe the Royall power, are called by a legall warrant from the *King*; and without ſuch a legall warrant they never were nor can be called: If there have been any generall Conventions without it, as the *reverent Divines* (who ſhould have done well to have quoted their authours, and their wordes) aſſure us, their actes were never eſteemed lawes, nor ſuch Conventions, Parliaments. And that the *King* hath a power by law of diſſolving Parliaments when he ſhall thinke it fit, hath been alwayes without controverſy: The two houſes in the laſt Parliament, though thriſty managers of their priviledges, never claimed an arbitrary povver of ſitting vvithout the Kings aſſent: It is a knowne *Maxime* of the lawe, *Rex eſt Principium, Caput, & Finis Parliamenti.* The *King* is the Beginning, the Head, and the Ende of Parliament.

Modus tenendi Parliamentum 4. pars inſtit. fol 3.4.

Secondly, he that laſt faſhioned and reformed the Engliſh Monarchie obteined the crowne by conqueſt; he had it not by election as a gifte and gratuity of the people, but made his paſſage by the Svvord: and Conquerours are not wont to allow of ſuch coordinations, or admit ſo many ſharers in the rightes of Soveraigntie as it phantaſied. Some anſwere that conqueſt is no good title; But I ſhall ſpeake of this at large in the ſecond queſtion, where I ſhall ſhew that conqueſt in a juſt warre undertaken by thoſe that have authority, is a lawfull and juſt

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juſt title. Others anſwer that the conqueſt was not full and intire, but a partiall conqueſt, occaſioning a compoſition and agreement, and ſo the government is ſpecificated according to that finall compoſition and agreement, which was made. I deny not a compoſition and agreement, but I ſay there was none ſuch as is pretended: for the compoſition and agreement was made after a victory; and it is not probable that the conquerour having beene at ſuch expence of bloode in gaining the crovvne and rightes of Soveraigntie, ſhould after his victorie give them avvay againe, and agree to ſuch a mixture as is pleaded for. And although it may be juſtly exacted from them to prove that there vvas ſuch a compoſition and agreement, as they ſpeake of made betvveene them; yet I vvill take the burden of proving upon my ſelfe, and ſhevv there vvas not: for all the compoſition and agreement vvhich vvas made or reported to be made by any author, vvas a grant from the conquerour that the *K*ingdome ſhould injoy the ancient lavves and cuſtomes, vvhereby it had been formerly governed, vvhich vvere called the lavves of *K*ing *Edvvard*: this he performed, being moved by the petitions and inſtances of the people, in the fourth yeare of his reigne, vvherin he confirmed unto them the ſayd lavves and cuſtomes. Novv amongſt the lavves of *K*ing *Edvvard* there is nothing to be founde that can give the leaſt colour or pretence for ſuch a coordination

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as is conceited, but on the other ſide the Kinges ſupremacy is chiefly eſtabliſhed by the ancient lavves of the land, for the common lavv vvas the ſame it is novv before the conqueſt; And is the baſe and pillar of Royall povver, as hath already been ſhevved ſufficiently: To vvhich I could adde many other things out of the lavves of King *Edward* vvherin the King is declared to be a Monarch and to be Gods vicegerent conſtituted and ordained to governe the Kingdome (vvhich include the people collectively taken) and his Church, and to protect and defend them (which is an act belonging onely to ſupreame authority, and vvhich can not be performed without it) from injuries and oppreſſion. *Rex autem quia Vicarius ſummi Regis eſt ad hoc eſt conſtitutus ut regnum terrenum, & ſuper omnia ſanctam veneretur Eccleſiam ejus, et regat, & ab iujurioſis defendat, etc. Vniverſa vero terra et tota et inſula omnes, uſque Norwegiam, et uſque Daciam, pertinent ad coronam regni ejus, et ſunt de appendicijs et dignitatibus regis, et una eſt Monarchia, et unum eſt Regnum, et vocabatur quondam Regnum Britanniæ, modo autem vocatur Regnum Anglorum.* The King becauſe he is the vicar of God is ordained that he may governe the Chureh and his Kingdom, and the people of God, and defend them from all injuries, &c. But the vvhole continent and all the Iſlandes as farre as Norvvay and Denemarke, belonge to his crovvne, and are the appurtenances

Αρχαιον. fol. 142.

and

and dignities of the King, and are one Monarchie, and one Kingdome, and it was anciently called the Kingdome of *Brittaine*, now the Kingdome of England. By another law of King *Edward* all men within the realme are obliged to take an oath of Allegeance, and to promiſe fidelity to the King, [a] which is a duty to be payed onely to ſupreame authority. [b] *Ita debent facere omnes Principes, & comites, & ſimul jurare coram Epiſcopis Regni in* Yolcmore, *& ſimiliter omnes proceres regni, & milites, & liberi homines univerſi totius regni Britanniæ facere debent in pleno* Yolcmore *fidelitatem Domino Regi ut prædictum eſt coram Epiſcopis Regni.* So ought all the Princes to doe, *(that is, to take the oath of allegiance)* and Earles, and ſweare together before the Biſhops of the Kingdome in a publike aſſembly, in like manner all the great men of the Kingdome, and Kinghtes, and all the free men, ought to doe fealty to our Lord the King, in a full aſſembly before the Biſhops of the Kingdome. To conclude this pointe; by the lawes of King *Edward*, the Crowne hath *legibus ſolutam poteſtatem*, [c] which is a prerogative competible to none but ſupreame powers: by them the King may diſpence with the Statutes, pardon the tranſgreſſion of them, and looſe whom he pleaſe from impriſonment whereſoever he goeth by his bare word alone. [d] *Habet etiam Rex alterius modi poteſtatem miſericordiæ ſuper captivos; ubicunque enim venerit in civitatem, vel burgum,*

[a] Beſold. de jurib. Majeſtat. cap. 2. num. 36. Bornit. de Majeſt. c. 17.

[b] L. 33.

[c] Iohan. Corvin. Briviar. cap. 11. Biſol. cap. 2. de jur. Majeſt. Special. num. 41. Morla in Empocio juris tit. 1. queſt. 2. Petra cap. 25.

[d] L. 19.

burgum, vel caſtellum, vel villam, vel etiam in via, ſi captivus fuerit, poteſt eum ſolo verbo ſolvere à captione: Solutus tamen ſatisfaciat cui forisfecit. Murdrator vero, vel traditor, vel hujuſmodi criminoſus, quamvis Rex iis condonaverit vitam & membra, ſecundum legem nullatenus in patria remanebunt. The King hath alſo an other kinde of power of pardoning ſuch as are in priſon, for whereſoever he goeth into any citty, burrough, caſtell, or village, or alſo in the high way, if any priſoner be there, he may by his word alone releaſe him from impriſonment; yet he that is ſo releaſed, muſt ſatisfy thoſe to whom he hath made the forfeiture, but a murderer, traytor, or any ſuch notorious delinquent, although the King hath given him his pardon of live and member, may not by law remaine in his country. The lawes then granted by *William* the Conquerour did not deprive him of the rightes of Soveraigntie, but did rather ſtrengthen his title joyning Law to Conqueſt; for leſt he might inconſideratly ſuffer his winges to be clipt, before he made the ſayd grant he cauſed all the lawes and Cuſtomes that were in force in the time of King *Edward* to be written out, and then after good deliberation, finding nothing in them prejudiciall to his Crowne and royall authority, he ratified and confirmed them. For whereas ſome of them ſay the fundamentall lawes are not written (that ſo they might cover their fraud and deceit, who protending

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fundamentall lawes are able to alleadge nothing out of them) this is contrary to all the Hiſtories, and records of thoſe times, which teſtify that *William* the Conquerour commanded twelfe of the wiſeſt men to be choſen in every countie, who did upon oath declare all the lawes and cuſtomes which they knew, not adding or omitting any thing; *Aldered* Archbiſhop of *Yorke* vvho had crovvned him, and *Hugo* Biſhop of *London*, as *Chronicon Lichfeldenſe* relateth, vvrit them out vvith their ovvne handes. Yet he granted not theſe lavves vvithout ſome emendations, as appeare by the lavves of *Henry* the firſt, *Lagam Regis EDWARDI vobis reddo cum illis emendationibus quibus eam Pater meus emendavit, conſilio Baronum ſuorum.* I reſtore unto you the lavves of *King Edward* vvith thoſe emendations, vvhich my father by the advice of his Barons added unto them. For although he let the old foundation ſtande, yet he inlarged it, and added divers nevv dignities and preheminences to the crovvne; not vvholely relinquiſhing the rightes he had gained by conqueſt, as ſome vvithout ground or reaſon affirme, but joyning the rightes of lavv and conqueſt together: And this vvas all done by conſent and agreement of the people, and confirmed by act of Parliament. Leges H. 1. cap. 2. Αρχαιον. fol. 159.

Thirdly the tvvo houſes of Parliament are but the *King*es counſell, according to their uſuall ſtile both in our Statutes and lavv bookes; at firſt the

tvvo pretended houſes gave themſelves no other name, and in probability vvould have been longer content vvith it, upon condition, his Majeſty vvould have obſerved their counſells as lavves, and have acknovvledged himſelfe bound to obey them: for they vvere vvilling then he ſhould have had the title of a *King*, ſo themſelves might have had all the povver and authority belonging to the crovvne. But the truth is there is a great diſtance betvveen counſells and commands: councellours are but ſubordinate officers, and may not impoſe their counſells for lavves upon thoſe vvhich they ſerve in that imployment. To this it is anſvvered, firſt, that the tvvo houſes are called the counſell of the realme as vvell as the *Kinges* counſell, and are truſted by the people as vvell as by the *King*. Although in ſome reſpects they be truſted by the people, yet as touching the office of councellours, they are truſted by the *King*; and vvhen they are called the councell of the realme, it is all one as it they were called the counſell of the *King*, for under divers phraſes the ſame thing is ſignified, it being an uſuall cuſtome in lavv in expreſſions of this kinde to take the realme or kingdome for the King himſelfe. Coke lib. 7. 12. *And oftentimes in the reports of our booke caſes, and in actes of Parliament alſo the Crowne or Kingdome is taken for the King himſelfe, as in FITZ. NATVR. BRE. FOL. 5. tenure IN CAPITE is a tenure of the crowne, and is Seignorie in groſſe, that is*

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is of the perſon of the King, and ſo is the 30.H. 8. Dyer fol.44.45. *a tenure in chiefe as of the crowne, is meerly a tenure of the perſon of the King, and therewith agreeth* 28.H.8.tit.tenure Br.65. *The Statute of the* 4.Hen.5.cap.ultimo *gave Priors aliens which were conventuall to the Kinge and his heires, by which gift ſaith* 34.H.6.34. *the ſame were annexed to the crowne. And in the ſaid act of* 25.E.3. *whereas it is ſayd in the beginning, with in the ligeance of England, it is twice afterward ſayd in the ligeance of the King, and yet all one ligeance due to the King. So in the* 42.E.3.fol.2. *where it is firſt ſayd the ligeance of England it is afterward in the ſame caſe called, the ligeance of the King, wherein though they uſed ſeverall manner and phraſes of ſpeech, yet they intended one and the ſame ligeance. So in our uſuall commiſſion of aſſize, of Goale delivery, of oyer and terminer, of the peace,&c. power is given to execute juſtice* ſecundum legem & conſuetudinem regni noſtri Angliæ: *and yet* Little. lib.2. *in his chapter of villenage,* fol.43. *in diſabling of a man that is attainted in a præmunire, ſayth, that the ſame is the Kings lawe; and ſo doth the regiſter in the writ of* ad jura Regia *ſtile the ſame* Secondly, it is anſwered, 2. Anſwer. although the two houſes be the Kinges counſell, yet they are not choſen by himſelfe, the Lords are *conſiliarii nati* borne counſellours and the Commons are *conſiliarii dati* counſellours given him by election of the people. Although the Lords be Reply.

borne counſellours, and the commons choſen by the people yet they can not ſit in counſell, but at ſuch times as the *King* is pleaſed to make uſe of them, and when he is pleaſed to ſummon them and command them to ſit, the Lords can not refuſe to come, or the people to ſend their deputies: nor doth it alter their condition whether they be borne his councellours, given him by the people, or choſen by himſelfe; they which are borne to places of dignitie and juriſdiction, or they which are choſen to them by the people, ceaſe not for all that to be ſubordinate to the *King*: and in this preſent caſe their birth and election can neyther rayſe *Them* above the condition of counſellours, nor throw *Him* beneath the condition of a *King*; they are all his ſubjects and miniſters, and are ſo farre from having authority to challenge obedience to their counſells, that if their counſells be not ſuch as they ought, they are themſelves obnoxious to a cenſure of law. A *King* is obliged in time of Parliament to follow the advice and direction of the two houſes, and out of Parliament of his privie counſell, when their advice and direction tendeth to the preſervation of his perſon, and of his Royall authority, and to the preſervation of his people, and of their rights and priviledges; not that counſellors have authority over *Kings*, but becauſe the matter of their counſells do morally oblige their conſciences: but if their advice and direction tend to the ruin of eyther, he may and ought to recede

cede from their counſells; and ſuch a King is not a tyrant, but ſuch counſellours traitors by the law. This is myſteriouſly repreſented to the Lords when they are firſt preferred to that degree and dignity, by the uſuall ſolemnities then performed; for if in ſtead of giving counſell for the King, they give counſell againſt him, they are not onely by the Statutes of the Land declared to be traitors, but if the Statutes were ſilent, by a tacite condition of law annexed to their dignities, and vayled under certaine cerimonies uſed at their firſt creation, they are to be condemned for ſuch, and to forfeit their eſtates. Coke in Nevils caſe lib. 7. fol. 34. *Ceux que ſont countees ount office de graund truſt & confidence, & ſont create pur 2. purpoſes:* 1. ad conſulendum regi tempore pacis: 2. ad defendendum regem & patriam tempore belli. *Et pur c̄ antiquitie ad done eux 2. enſignes a reſembler ceux deux duties: car primerem̄t lour teſte eſt adorn ove un cappe de honor, & coronet, & lour corps ove un robe in reſemblance de counſel: ſecundm̄t ilz ſont ſuccinct ove un eſpee in reſemblans q̄ ilz ſerr Foiall et loyal a defender lour Prince et pays: Donques quant tiel perſon encōut le dutie et fine de ſon dignitie, priſt non ſolem̄t counſell, mes armes auxi encōut le Roy a luy deſtroyer et de c̄ eſt attaint per due courſe del ley, per ceo il ad forfeit ſon dignitie per un condition tacite annexe al eſtate de dignitie.* They which are Earles have an office of great truſt and confidence and are created for two purpoſes firſt, to coun-

councell the King in time of peace, secondly to defend the King and their country in time of of warre; and for this cause Antiquity hath given them two ensignes to represent these two duties, for, first, their head is adorned with a cappe of honour, and a coronet, and their body with a robe in resemblance of counsell; secondly they are girt with a sword in resemblance that they shall be faithfull and loyall to defend their Prince and country, when such a person then against his duty and end of his dignitie take not onely councell but armes against the King to destroy him, and be attainted thereof by due course of law. He hath thereby forfeited his dignitie by a tacite condition annexed unto it.

Fourthly the Parliament is one of the Kinges courts as is apparent both by our Statutes and law bookes; the two houses therefore must derive all their authority from him: for the King is as a full sea of authority from whome all power and jurisdiction, by commissions, writs, letters patents, &c. as through so many channells, run into all his courtes; if the two houses have authority radically in themselves by fundamentall constitution, or if they derive their authority from any other then the King, the court is none of his. The Treatiser having made divers suppositions, which he telleth the reader are the lawes of the lande, or to use his owne wordes the modell and platforme of the English Monarchy, out of the sayd suppositions frameth this answer. *It is*

1. Iac. cap 1. Bracton lib. 2. cap. 16. Fleta lib 2. cap. 2.

Answer.

is his Parliament becauſe an aſſembly of his ſubjects, convocated by his writ, to be his councell to aſſiſt him in making lawes for him to govern by: yet not his as his other courtes are altogether deriving their whole authority from the fulneſſe which is in him.

Whereas he calleth the Parliament *an aſſembly of his ſubjects*, whereas he ſaith *they make lawes for him to govern by*, and that there is a *fulneſſe of power in him*, he doth but complement with his Majeſty; his ſuppoſitions and principles agrees not with ſuch expreſſions: And yet all that he ſaith is not ſufficient to make the Parliament his Majeſties court, except it deriveth all authority and juriſdiction from him; it is not enough that they are *an aſſembly of his ſubjects*; for in divers forraine Nations Eccleſiaſticall perſons are ſubjects to the princes they live under, yet Eccleſiaſticall courtes belong not to thoſe Princes, but to the Sea of *Rome*; nor is it enough which he addeth, that they are ſummoned *by his writ*; for the judges of divers courts, but chiefly of courtes Chriſtian, have ſent out citations and ſummons, in their owne name, as the King doth by writ, and yet they are not the proprietaries of thoſe courtes; nor yet is it ſufficient that they ſit in Parliament to advance his intereſt, in giving him *counſell, and aſſiſting him to make lawes to govern by*; for they Conſult and make lawes for the intereſt of the whole kingdome as well as for the intereſt of his Majeſty, and according to his owne opinion they conſult and make lawes for them-

Reply.

themſelves to govern by, ſo farre as concerns their owne juriſdiction, and the adminiſtration of that power which they have in the ſuppoſed coordination. It is not therfore becauſe they are his ſubjects, or becauſe they are ſummoned in his name by his writ, or yet becauſe they are called to be his counſell, and to aſſiſt him to make lawes to govern by, that makes it his court, but becauſe it derives authority from him; It is authority that conſtituts a court, and inables it to proceed judicially, he which owns that, is owner and Maſter of the Court. Whereas he ſaith that the *Parliament is not his as his other courts are, altogether deriving there whole authority from the fulneſſe which is in him*, he contradicts all that he ſayd before; for if the two houſes derive not their authority from his Majeſty, but have it radically in themſelves, how is there a fulneſſe of power in him? if the *jura Majeſtatis* be divided amongſt them, he hath not a fulneſſe, but his ſhare onely of power: or how do they aſſiſt him to make lawes to govern by? they aſſiſt not him alone, but all the three eſtates are mutually aſſiſtant to one another in making lawes to govern jointly, where their joint concurrence is neceſſary, or to govern in their ſeverall charges, where they may act ſeverally. Or laſtly how can they be called his ſubjects? ſubjection is due to the three eſtates acting together, or to eyther of them in their ſeverall places, and juriſdictions, as well as to him; for it is due to him

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in the adminiſtration of that power which belong to him alone, ſo is it likewiſe to them in things within the verge and compaſſe of their authority. And as this laſt part of his anſwer is a contradiction to the former, ſo is it likewiſe to the lawes of the land; for I have ſheved as well by the Statutes as Common lavv, that all authority both Eccleſiaſticall and civill is derived from the Kings Majeſty; and that he hath full and plenary povver to attaine and reach to all the ends of Government: Mr. *Lambart* himſelfe although a great Advocate of the tvvo houſes, and one that have ſaid more to enhaunce their authority, then himſelfe if he were alive, or any one for him, are able to maintaine; Yet, diſcourſing upon the high Courtes of juſtice, he acknovvledge them all, and amongſt the reſt the high court of Parliament, to have their originall from the King, to be all Roſes belonging to the Garlande of the Crovvne, and to derive all authority from him. Archeion fol. 274.

Fiftly, Parliaments as they are novv eſtabliſhed, conſiſting of three eſtates, the King, the Lords, and the Commons, are but of late exiſtence; and therefore ſuch a compoſition and mixture of the ſaid eſtates as is pretended can not be by originall conſtitution. It is granted that Parliaments othervviſe are of a long continuance, and may plead the preſcription of many hundred yeares; for although the vvord Parliament hath been introduced (as is probable) ſince the Norman conqueſt, yet a conven-

tion of that nature vvas in uſe in the time of the *Saxon* Kings, vvho did ſeldome make lavves vvithout the councell and aſſent of their vviſe men; and this aſſembly vvas called in the Saxon language ȝeþeaꝛe *a counſell* and ɣynoþ *a Synode*, vvhich laſt appellation is borrovved of the *Greeks*. It is granted alſo that the Commons vvere ſometimes called to ſuch conſultations, but that vvas a thing not neceſſary, or frequent, but rare, arbitrary, and contingent. There vvere no certaine perſons deſigned by lavv, vvhoſe concurrence vvas required to conſtitute a Parliament, but the *King* uſed the advice of thoſe onely which he pleaſed to call unto himſelfe, which were alwayes ſuch as he thought moſt able to councell and direct him, in the matters that were to be conſulted of, and whoſe aſſent was likely to adde moſt credit and eſtimation to the lawes that were to be divulged. Sometimes he made lawes without the aſſent of others; for *Offa* King of the *Mercians* as *Matthew Paris* relateth being at *Rome* ordained that every Houſhoulder in all his dominions, (which were three and twenty Provinces, or Shires) that had above thirty penny-worth of goods in the field, ſhould every yeare pay a Penny to the maintenance of the Engliſh Schoole that then floriſhed *at Rome*, which in thoſe times vvas a great taxation. *His igitur auditis Rex, quid digne tantæ benignitati compenſet, ſecum ſtudioſe pertractat. Tandem Divina inſpirante Gratia, conſilium inivit ſalubre, et in die craſtina*

In vita Offæ 2.

craſtina ſcolam Anglorum *qui tunc* Romæ *floruit ingreſſus. Dedit ibi ex Regali munificentia ad ſuſtentationem Gentis Regni ſui illuc venientis, ſingulos argenteos, de familiis ſingulis, omnibus in poſterum diebus, ſingulis annis. Quibus, videlicet ſors tantum contulit, extra domos in paſcius, ut triginta argenteorum pretium excederet. Hoc autem per totam ſuam ditionem teneri in perpetuum conſtituit, excepta tota terra* Sancti Albani, *ſuo Monaſterio conferenda, prout poſtea collata privilegia proteſtantur.* The King hearing this conſidered with himſelfe how he might recompence ſo great a curteſie; at laſt by Divine Inſpiration very Sound counſell vvas ſuggeſted unto him, and going the next day into the *Engliſh Schoole* that then floriſhed *at Rome*, he gave to the ſuſtentation of ſuch as ſhould come thither out of his owne Kingdome a penny to be payed yearly for ever out of every family by all whoſe goodes in the fielde exceeded the value of thirty pence. And this he made a perpetuall conſtitution through out all his dominions, excepting onely the lands, that vvere to be conferred upon the Monaſtery of *Saint Albane*, as the priviledges afterwards granted doe witneſſe. This law continued a long time in force, yet I finde it not confirmed by act of Parliament eyther in his owne, or in the reignes of his ſucceſſours, I finde onely in the lawes of ſome Kings, as of King *Edgar*, and King *Edward*, a ſtrict proviſion made for the payement thereof, becauſe it vvas the *Kinges* L. 4. L. 10.

Almes, which reaſon doth imply that it was not given by the whole Kingdome in Parliament, but by the King alone. But yet in thoſe times lavves were made commonly by the approbation and conſent of the Nobles, Archbiſhops and Biſhops, in a publike Synode or Parliament: Sometimes the Queen vvas preſent, ſometimes the inferiour Cleargie, and ſometimes alſo the Commons, but that happened very ſeldome. I have ſeen divers *Charters* both in the *Saxon* and *Latine* tongue, granted to *Churches*, and *Monaſteries*, confirmed by act of Parliament, and atteſted by the Members of the ſame, yet amongſt them all I have not ſeen ſo much as one, vvhere unto the aſſent or name of any of the Commons is ſubſcribed. I will here inſert one, for example ſake, granted to the *Monaſterie* of *Saint Albane* by *Ecgfride* ſonne of *Offa* becauſe it is but ſhort, and extant in the laſt edition of *Matthew Paris*, vvere any one that pleaſe may ſee both that and divers others of like nature. *Ego* Ecgfridus *gratia Dei Rex* Merciorum, *anno Dominicæ incarnationis ſeptingenteſimo nonageſimo ſexto, Indictione quarta, primo vero anno Regni noſtri: terram X. manentium nomine* Thyreſeld *cum terminis ſuis. Domino meo* Jeſu Chriſto *& ejus pretioſo Marteri* Albano, *liberaliter & æternaliter cum conſenſu & teſtimonio optimatum meorum, in jus Monaſteriale, pro anima mea & parentum meorum devotiſſime tribuo & libenter concedo. Sitque prædicta terra ab omni terrena ſervitu-*

Auctar. additament. & fol. 239. 240.

tis

tis jugo, ſemper aliena; atque eadem libertate ſit libera, qua cætera terræ Monaſterii beati Albani *conſcriptæ atque conceſſæ ſunt à glorioſo* Offa *genitore meo.*

Ego Ecgfridus *Rex hanc meam donationem cum ſigno crucis confirmare curabo.*

X *Ego Cynedrid Regina conſenſi.*
X *Ego Vnwona Epiſcopus.*
X *Ego Weohthunus Epiſcopus.*
X *Ego Beona Abbas.*
X *Ego Elfhun Epiſcopus.*
X *Ego Brorda Dux.*
X *Ego Wigbertus Dux.*
X *Ego Wicga Dux.*
X *Ego Cutbertus Dux.*
X *Ego Ethelheardus Archiepiſcopus conſ.*
X *Ego Eobing Dux.*
X *Ego Forthred Abbas.*
X *Ego Sighere filius Siger.*
X *Ego Eſne Dux.*
X *Ego Cydda Dux.*
X *Ego Winbertus Dux.*
X *Ego Heardbertus Dux.*
X *Ego Brorda Dux.*

Conſcriptus eſt autem hic liber, in loco qui dicitur Chelchyd, *in* Synodo *publico.*

I *Ecgfride* by the grace of God King of the *Mercians* in the year of our Lord ſeven hundred ninety ſixe, in the fourth Indiction, and firſt yeare of our reigne, do give and grant, for my owne ſoule, and the ſoules of my anceſtours with the aſſent and teſtimony of my Nobles, ten Hydes of land called *Tyreſeld* with the Boundes thereof, unto the Monaſterie of *Saint Albane:* and I exempt the ſayd landes from all ſervices, and make them free with the ſame freedome which was granted to the reſt of the landes

landes of the ſame Monaſtery by *Offa* our father of glorious memory,

This *Charter* vvas vvritten at *Chelchyd* in a publike Synod.

By this Charter it is evident, that Parliaments vvere houlden in thoſe times without the Commons; for whereas it is ſpecified by the *King*, that the above ſaid landes were given *cum conſenſu & teſtimonio Optimatum*, his meaning is, that his grant was confirmed by the aſſent and teſtimony of Parliament; and yet the word *Optimates* can not be extended to the Commons, neyther vvas his grant confirmed by their teſtimony. In the prefaces likewiſe of divers *Saxon Lawes* ſet out by M^r. *Lambart* the perſons are expreſſed by vvhoſe counſell and aſſent the ſaid lavves vvere enacted; yet, except onely in the preface of *King Inas* lavves, there is no mention at all made of the Commons, but ſeverall *Kings* made moſt of thoſe lavves by the advice and conſent of their Biſhops, and vviſe men, vvhich were no other then their privy Counſel, M. *Lambart* in his *Archeion* affirmeth them to be the Nobility, and commons; and to ſupport his opinion he alleadgeth a paſſage out of the preface of the lawes of *King Elfred* which is neyther materiall, nor faithfully cited; for there is no ſuch paſſage to be found in that preface: But to make his errour apparent I ſhall need no other teſtimonies, then two preſidents mentioned by himſelfe, the firſt is of a Parliament houlden by

Pag. 150.

Pag. 247.

Edwin

Edwin King of Northumberland, the second of a Parliament houlden by *Segebert* King of the East Saxons, whereunto they called their friends and their wise men; for *Edwine* being instigated by Paulinus to imbrace the Christian religion, answered *þ he polde mid his ꝼreondum ⁊ mid his þitum ꝼꝼræce ⁊ ȝeþeate habban*, that he would speake with his friends and with his wise men in Parliament, which he did accordingly, and by their assent, himselfe his whole Nobility, and a great part of the commons, were baptised, in like manner Sigebert held a Parliament whereunto he called his friendes and his wise men upon the like occasion, *Ða hæfde ȝeþeate mid his þitum ⁊ ꝼreondum ⁊ mid heoꝼa tꝼÿmenÿꝼꝼe ⁊ ꝼultum ⁊ ȝeþaꝼunȝe cꝼiꝼtes ȝeleaꝼan onꝼenȝ.* Then he held a Parliment with his wise men and friendes, and by their advice, aide, and consent, received the Christian faith. From this I gather that their wise men could not be their Nobility and commons, as Mr. Lambart supposeth, for all their friends must needs be conteined under one of those degrees, and in case his supposition were true, should not have been distinguished from their wise men, which in all good construction they must, for the wordes do evidently imply, that besides their vvise men, they called such other of their friendes, as they thought, by reason of their prudence, or povver and prevalency

Beda Hist. Eccles. lib. 2. cap. 13.

Beda Eccles. Hist. lib. 3. cap. 22.

vvith the people, vvere most like to assist them, and further their designes. But whosoever their wise men were, although they vvere frequently called, yet they vvere not all of them called alvvayes to make lavves, for in the time of Ethelstane divers lavves vvere made by the counsell and assent of the cleargie alone, vvhich vve find amongst his other lavves. *Ic Æþelstane Cyning Eallum minum geþeþum binnon mine þice gecyþe mid geþeaȝe þulfhel-mes mines Æþcebiseoþes ⁊ ealþa mina oþþa biseopa ⁊ godes deoþa foþ mina sinna foþgyfnesse þ ic þille, &c.* I *Ethelstane* King signify to all my governours vvithin my *K*ingdome, that by the advise of *wulfhelmus* my Archbishope, and all my other Bishops, and servants of God, for the forgivenesse of my sinnes, I have ordained, &c. The lavves that goe before these vvere made by the assent of the Archbishope *wulfhelmus* and other Bishops onely, and they vvhich follovv after at a more generall convention at *Gratlie* vvhere the Archbishop *wulfhelmus* and many Noble men, and vvise men vvere present. And although lavves vvere frequently made and Parliaments houlden, in the reignes of the *Saxon Kinges*, yet the people had been so seldome called to such conventions in the time of *Henry* the first, that *Polydore Virgil* saith that institution may seeme to have sprung from him. *At illud apposite habeo dicere, Reges ante hæc tempora non con-*

Polydor. Virgil. lib. 11. Hist.

conſueviſſe populi conventum conſultandi cauſa (niſi perraro) facere, adeo ut ab Henrico *id inſtitutum jure manaſſe dici poſſit.* But this I can ſpeake appoſitely, that Kings before theſe times vvere not accuſtomed (except very ſeldome) to call the people to their conſultations, ſo that this inſtitution may be ſaid to have had its firſt beginning from King *Henry*. This is certaine the houſe of Commons hath been accuſtomed novv a long time to give their conſent in making lavves, but hovv long is not certaine; their opinion is moſt likely which think this cuſtome began to take place about the time of *Edward* the firſt. For there are probable reaſons which confirme, that lawes were made without the concurrence of the Commons long after the time of the above ſaid *Henry* the firſt, who, although he did call them more frequently then any of his predeceſſours had done, yet did not binde himſelfe to make lawes alwayes by their aſſent. But becauſe it would require an intire treatiſe to ſpeake ſufficiently of this ſubject, and becauſe it can no way prejudice the cauſe in hand if we grant Parliaments as they are now moulded to be by fundamentall agreement, ſeeing ihe King by the lawes of the lande, and the ſaid fundamentall agreement, is inveſted, as hath been ſhewed, with all the rights of Soveraigntie, I will lay by many advantages, and omit many reaſons and paſſages which I could alleadge touching this matter.

Sixtly, if the Nobility and people be then, and

onely then, coordinate with the *King*, vvhen they are in their ſite, relation, order, and union, in Parliament, as the fuller Anſwerer affirmeth; in time of Parliament the Kingdome ſhould be a *Head* vvithout a *Body*: For if the *King* be part of the *Head*, and the whole Nobility part of the *Head*, and all the People part of the *Head* too, vvhere is the *Body*? And on the other ſide in the vacancy of Parliaments, the Kingdome ſhould be a *Body* vvithout a *Head*: For if the Nobility and people he onely then coordinate when they are in their ſite, relation, order, and union in Parliament, after a Parliament be broken up, vvhere is the *Head*? For as the preſervation of the vvhole conſiſt in the order and union of its partes, ſo the diſſolution of it followeth their ſeparation and divorce. If this opinion then vvere true, the commonwealth ſhould be a ſtrainge deformed *monſter*; for in time of Parliament, vvhen all the *Body* vvere a *Head*, it ſhould be *monſtrous* by too much perfection; and out of Parliament, vvhen tvvo partes of the *Head* vvere fallen into the *Body*, it ſhould be *monſtrous* by too little: In both caſes is ſhould want that beauty and comlineſſe which conſiſts in the harmony and proportion of ſeverall partes.

Laſtly, if we diſcend into particulars, we ſhall find Parliaments to be ſo moulded, that their frame and compoſition rendereth the two houſes an unmeet ſubject for ſupreamacy; for the Militia, the povver

of

of making vvarre or peace vvith forraigne princes, and moſt of the other rightes of Soveraigntie, require a ſubject perpetually exiſtent; many occaſionall accidents may ariſe that may call for preſent and ſudden uſe of the ſupreame povver, for vvhich there can be no proviſion made by bodies not exiſtent.

I could adde much more, both from the ſtatutes, Common law, and reaſon, as well concerning the Kings ſupreamacy in generall, as concerning the particular rightes of Soveraigntie: But I preſume that which hath been ſaid is more then ſufficient, not onely to ſatisfy all that are indifferent and neutrall, but to convince thoſe that are moſt intereſſed, vvho ſhall not eaſily find ſhiftes and diſtinctions plauſible enough to illude ſuch cleare teſtimonies of lavv. But God onely is able to change their heartes, and to make ſuch impreſſions there as can cauſe them to repent and turne from their evill vvayes; I ſhall pray continually he vvould do it, as vvell in regard of the peace and happineſſe of the Kingdome, as of their ovvne ſalvation, vvhich I can not othervviſe hope they ſhould obtaine; For vvhatſoever deceivs them, and bears up their ſpirits for a time, repentance at laſt, (if God give them grace) vvill prove their beſt fortune.

CHAP. VII.

Divers objections made by the pretended houſes anſwered: The Kings ſupreamacy ſhewed to be in his perſon, *not in his* courtes.

THe Kings ſupreamacy being made apparent I ſhall now proceed to anſwer their objections, which yet are of that nature that they deſerve more to be contemned then anſwered: for inſtead of law they alleadge *Bedas* axioms, their owne fancies, and ſuch other impertinencies, as one would thinke ſhould Sooner move a man to laughter, then to be of their opinion. But becauſe they ſhall not complaine that their objections are con-

concealed, and becauſe in anſwering them I ſhall further confirme the *Kings* ſupreamacy, I will bring them all in order, not ſuppreſſing or omitting any thing that hath but the face of an objection, how ſlight and impertinent ſoever. I will beginne with that which is alleadged by the two pretended houſes themſelves, whoſe moſt remarkable objections are theſe which follow, being the ſumme and ſubſtance of that which they ſay in all their declarations touching matter of right, in this particular. *The Kings ſupreamacy is meant* in Curia non in Camera *in his courtes not in his private capacity, and to ſpeake properly, onely in his high court of Parliament, wherein he is abſolutely ſupreame head and governour, from which their is no appeal. And if the Parliament may take an account what is done by his Majeſty in his inferiour courtes, much more what is done by him without authority in any court. And it is preached to the people in the Kinges declarations, that by the ſupreamacy is meant a power inherent in the Kings perſon, without, above, againſt all his courtes the Parliament not excepted, whereby the excellent lawes are turned into an arbitrary government.* Argus eyes will Scarſe be able to diſcover a worde of lavv or truth in all this, every ſentence ſeemeth rather to be a Sarcaſme then to conteine matter of ſerious importance, wherein they deale with his Majeſty, as the Iewes did vvith our *ſaviour Chriſt*, who having ſtripped him of his apparrel, and uſed all the ſpitefull and

and opprobrions tearmes they could deviſe againſt him, added at laſt a mocke to their other in civilities bowing unto him, and ſaying, *HAYLE KING OF THE IEWES.* The two pretended houſes having likevviſe ſeized upon all his Majeſties revenues, and rightes of the Crovvne, and offered him all the indignities they could invent, do yet ſtile him their *King, and ſupream head and governour*, but in ſuch a manner, as they may ſeem, like the *Iewes*, rather to doe it by vvay of deriſion then in earneſt.

The Kings ſupreamacy, they ſay, *is meant* in Curia non in Camera, *in his Courtes not in his private capacity.* As they fancy the people to have conveighed all authority to the King, ſo they fancy the King to have poured it out againe into his courtes, as if he had no povver, authority, or juriſdiction, adherent in his perſon, but had committed all to his delegate Iudges, or rather (vvhich they ſay is *to ſpeake properly*) unto themſelves: vvhereas he hath by lavv a royall and ſuperimenent juriſdiction above all his courtes, and may call cauſes out of them before himſelfe, or heare appeales, and reforme their abuſes vvhen occaſion require. Lambart. Archeion fol. 95. *I ſhall not need to repeat that vvhich I have before this time opened, touching the beginning of the Kingly power and authority, for the delivery of juſtice to all the ſortes, and in all the ſuites of his ſubjects, but I will confirme by prooſes drawne out*

Manwood of forreſt lawes part. 1.

out of our country lawes, and lawyers that the ſelfe-ſame generall juriſdiction is appropriated to all the Kinges of this realme of England. Maſter Henry Bracton *that lived in the time of King* Henry *the third hath in the ninth and tenth chapter of his booke theſe words following:* Rex (& non alius) debet judicare, ſi ſolus ad id ſufficere poſſit, cum ad hoc per veritatem Sacramenti teneatur aſtrictus, exercere igitur debet Rex poteſtatem juris, ſicut Dei Vicarius & miniſter in terra. Sin Dominus Rex ad ſingulas cauſas determinandas non ſufficiat, ut levior ſit illi labor in plures perſonas partito onere, eligere debet viros ſapientes, & timentes Deum, & ex illis conſtituere juſticiarios. *The wordes do prove two thinges ſerviceable to this purpoſe: firſt, that the King ought onely to be the judge of his people, if he alone were able to performe that office, as well becauſe he is within his owne Kingdome the vice-Roy of God (the ſupreame judge of the world) as alſo for that he is thereunto bounde by oath, taken at the Coronation. The ſecond that albeit he doe (for the multitud of cauſes) ſubſtitute others underneath him, yet is he not thereby diſcharged himſelfe; for it is done* ut levior ſit illi labor *that his labour be the lighter, not that he ſhould ſit unoccupied; and leaſt you ſhould doubt that ſo much is not compriſed in that oath of his, one qneſtion therein amongſt others is this:* Facies fieri in omnibus judiciis tuis æquam, & rectam juſtitiam, & diſcretionem in miſericordia, & veritate ſecundum vires tuas: *To*

which he answereth, faciam: *wherin the wordes* judiciis tuis, & vires tuas, *doe more properly denote his owne doing, then the doing of his subalterne justices; albeit their judgement be after a certaine manner, the judgement of the King himselfe also, from vvhence their authority is derived. Much like the wordes of* Bracton *speaketh King* Edward *the first in the beginning of his booke of lawes commonly called* Britton: *where after he had shevved that he is the Vicar of God, and that he hath distributed his charge into sundry portions, because he alone is not sufficient to heare and determine all complaintes of his people; then he addeth these wordes:* Nous volons que nostre jurisdiction soit sur touts jurisdictions en nostre realme: issent que in touts maners de felonies, trespas, contracts, & en touts maners de autres actions personals, ou real, ayons poer a rendre & faire rendre les jugements tiels come ils afferont, sans auter processe, par la ou nous sçavons la droit verite come judges. *We will,* saith the *King, that our owne jurisdiction be above all the jurisdiction of our realme: so as in all manner of felonies, trespasses, contracts, and in all other actions personalls, or realls, we have povver to yeald (or cause to yeald) such judgements as do appertaine (without other processe) vvhereseoever vve know the right truth, as judges. Neyther may this be taken to be meant of the Kings bench, vvhere there is onely an imaginary presence of his person; but it must necessarily be understoode of a jurisdiction remaining*

and

and left in the Kings Royall bodie and breast distinct from that of his Bench, Marshalsey, Common pleas, exchequer, and the other ordinary courtes: because he doth immediatly after, in the same place severally set forth by themselves, as vvell the authority of the Kinges Bench, as of the rest of those his ordinarie Courtes of justice. And that this vvas no nevv made lavv, or first brought in by the Normane conquest, I must put you in minde of that vvhich I touched before, out of the Saxon lavves of King Edgar, vvhere you did read it thus: Nemo in lite Regem appellato, nisi quando domi jus consequi non poterit, sin juris summi onere domi prematur, ad regem ut is id oneris allevet, provocato: *Let no man in suit appeale to the King unlesse he may not get right at home; but if that right be too heavy for him, goe to the King to have it eased. By vvhich it may evidently appeare, that even so many yeares agoe there might appellation be made to the Kings Person, vvhensoever the cause should inforce it.* Hitherto Mr. Lambart; who doth afterwards further prove this supreame and supereminent jurisdiction of the King by divers presidents and acts of Parliament. And although the Commons in some other Parliaments have seemed to impugne this Prerogative, yet here, as he saith, *the Kings alvvayes most gravely and considerately repelled that sort of attempt.* The Kings supreamacy then is inherent in his *Person* not in his *Courtes*, as the two pretended houses affirme; for his politique capacity Fol. 125.

can not be ſeperated from his naturall, but what power ſoever he maketh over unto his *Courtes*, the ſame and greater remaineth in *Himſelfe*; His authority is not ſeparated from him by ſuch a conceſſion *privitivè* but *Cumulativè* onely as *Civilians* diſtinguiſh in Conceſſions of like nature made by the *Empercur*; who give theſe reaſons for the ground of their law, not much different from thoſe alleadged by *Lambart* out of *Bracton* and others. *Credendum non eſt Imperatorem ita fontes ſuos derivaſſe forâs ut nihil penes ſe remanſerit; ſed in quavis conceſſione ſemper authoritas & perſona ejus excepta cenſetur: quis enim tam ſtolidus ut alii benefaciendo ſeipſum conſumere velit, cum etiam Principis ſit, & ad officium ejus proprie pertineat jus dicere Knichen. d. ſuperiorit. territ. cap. 1. num. 518. Wurmſ. exercit. 3. num. 15. Roſental. d. feud. cap. 5. concluſ. 13. Pruckman. d. Regal. cap. 1. num. 17. Leipold. d. Concurrent. juriſdict. quæſt. 1.* It is not to be imagined that the Emperour ſhould ſo empty his fountaines as to leave nothing in himſelfe; but it is to be conceived that in every conceſſion his owne Perſon and authority is excepted, for who is ſuch a foole to conſume himſelfe by doing good to others, it is alſo the eſſentiall property, and office of a Prince, to doe juſtice.

The pretended houſes proceed; *And to ſpeake properly onely his high court of Parliament wherein he is abſolutely ſupreame head and governour from which there is no appeale.* They Speake not more pro-

properly as they ſay, but much more improperly then they did before; it is the ſame authority that is in all his courtes and in his Perſon too, though not all the ſame authority; for it is limited and reſtrained in his courtes by commiſſion, writ, or law; and according as thoſe limitations and reſtrictions are more or leſſe, ſo may courtes be ſaid to have a greater or leſſe juriſdiction, but not the *King* to be more or leſſe ſupreame: nor is their expreſſion improper onely, but alſo full of falſhood and deceit; for whereas they ſay *there can be no appleale from the high court of Parliament*, they deſire the people ſhould ſo conſtrue theire wordes, as to thinke the two houſes could jointly by reaſon of the *Kings* virtuall preſence take cognizance of a plea, and give judgement upon it, from which theire could be no appeale; which had they ſpoke out their falſhood had been tranſparent. for onely the Lords houſe is a court of judicature, and from thence appeales may be made to the *King* who may and have reformed the undue proceedings of that court; for *anno* 18. *Edward.* 1. *Bogo de Clare* being diſcarged of an accuſation put againſt him in Parliament for ſome imperfections of forme that were diſcovered in the complaint, the *King* commanded him neverthele ſſe to appeare before himſelfe *ad faciendum & recipiendum quod per Regem & ejus conſilium fuerit faciendum* and ſo proceeded to a reexamination of the whole cauſe. Neyther is the former part of their wordes truer then the latter; the

Lamberts Archeion fol. 133.

Kings ſupreamacy they ſay to ſpeake properly *is onely in his high court of Parliament.* This in their ſence is falſe; the ſupreamacy of the King is no more in his high court of Parliament by reaſon of his virtuall preſence or politique capacity, then in his other *Courtes*, when he is perſonally there his ſupreamacy then together with his *Perſon* is in the *Court*, not otherwiſe. For I have ſhewed already in divers places that the rights of Soveraigntie are not onely individually inherent in his *Perſon*, but ſo inſeperably alſo annexed unto it that they can not be communicated to others by any grant or conceſſion made by himſelfe in private, or by an act of Parliament. I ſhall now adde, that their conceit is called in *Cokes reports* a damnable and damned opinion, and hath been at large confuted, and condemned, by all the judges, as is there related; it was firſt invented by the *Spencers*, who to cover their treaſon, ſayd that homage and the oath of ligeance was more by reaſon of the Kings Crowne, that is by reaſon of his politique capacity then by reaſon of the *Perſon* of the King: from which opinion they inferred theſe deteſtable conſequences. 1. If the King doe not demeane himſelf by reaſon his Leiges are bound by oath to remove him. 2. Seeing the King could not be reformed by ſuit of law, that ought to be done *per aſpertee*. 3. that his Lieges are bound to governe in ayde of him, all which were condemned by two Parliaments, one in the Reigne of

Lib. 7. in Calvinet caſe.

of *Edward* the ſecond called *exilium Hugonis le ſpencer*. And the other *anno* 1.*E*.3.*cap*.1. And indeed their conceit is ſo irrationall, that it might eaſily be prognoſticated they would never make good Statsmen which could find no better evaſion to illude the lawes. For when the King is not perſonally preſent is his courtes, he can be there by reaſon of his politique capacity no other wayes but by virtuall emanation; there can be in them no more authority then is delegated and committed to his judges: Now it is a common conception as evident as the firſt principles, that a delegate power can not be ſupreame. A King may alienate and reſigne up ſupreame authority, but he can not delegate it; In how generall tearmes ſoever, ſay *Civilians*, authority be granted by the *Conceſſour* to the *conceſſary* ſupreame authority can not be compriſed under thoſe tearmes. *Quocunque modo Regalium conceſſio fiat, nihilominus ſuperius illud & Majeſtaticum imperium, ea largitione nunquam cenſeatur comprehenſum, ſed potius major ſemper, quam eſt conceſſa, reſervata & retenta putetur poteſtas. cap, Dudum. § .hoc igitur de præbend. in 6. l. inquiſitio. Et ibi Dec. de ſolut. Periginus de jure fiſci, lib.* 1. *tit. ult. num.* 33. *Kniken. de jure territorii cap.* 1. *num.* 315. Which way ſoever Regalities are granted, it may not be ſuppoſed that ſupreame authority is comprehended under ſuch a grant, but rather that a greater povver then is granted is reſerved *to the Prince.*

They

They adde further, *And if the Parliament may take an account vvhat is done by his Majeſty in his inferiour courtes, much more vvhat is done by him vvithout authority in any court.* This *if* is well put in; they ſay not categorically they may take an account what is done by his Majeſty in his inferiour courtes, yet they vvould have the people thinke them to have ſuch a povver; and therefore they lay it downe as a ſuppoſition vvhich they ſeeme to take for granted, although they knovv it to be falſe: for they may take an account vvhat is done in his courtes by ſubordinate Officers and Miniſters, but not vvhat is done by his Majeſty, vvho as King can no more doe vvrong then God can be the authour of ſinne; His authority is from God, and if injuſtice be committed in his courtes his Kingly authority is not the cauſe thereof, but the corruption of his judges vvho abuſe it; and his Majeſty may take an account of them eyther privately, or in his Parliament, but is not himſelfe accountable for their abuſes. For although the judgement of his courtes may and is tearmed in law the judgement of the King, yet that is to be underſtood of the act it ſelfe, which can not be effected without his influence and concurrence; not of the obliquity and deviation from juſtice vvhich is in it. Nor is he yet accountable to any but God for his Perſonall actions; by the lavves of the land he can not be obnoxious to any guilt,

guilt; had he committed treaſon or any other crime before he was *King*, by taking the Crowne upon him all attaindor of his *Perſon* is purged *ipſo facto*. And therfore if the aſſumption were granted yet the conſequence muſt not; had they power to call him to account for the corruption of his courtes, it followeth not that they might alſo convent him for his Perſonall errours: for the juriſdiction of a court is not to be argued and proved by inferences, but by commiſſion, Statute, or preſcription; and I am ſure they can not prove ſuch a juriſdiction as they challenge by any of thoſe pleas. Enough hath been ſaid already to prove them to be his inferiour delegate, and ſubordinate miniſters, that derive their authority from him, and in caſe of grievance are to ſue unto him by petition, which is all the help the law giveth in ſuch exigencies; for they are ſo farre from having any juriſdiction over him in matters of miſdeamenour, that they can not take knowledge of thoſe caſes wherein Majeſty without diſparagement may ſubmit it ſelfe to a legall triall as in controverſies of right, or of title to land, &c. except he be pleaſed to have the buſineſſe decided in that court. In *Haedlows* caſe before mentioned, it is reſolved by all the juſtices, that controverſies which concerne the *King* can not be determined in Parliament; and it is there added above what hath been cited, that *Kings* may not be judged by others then themſelves and their juſtices, *unques Roys ne ſerra adjuge ſi non per eux meſmes & lour*

1. H. 7. 4.

22. E. 3. 6.

lour justice. And this is true, as it is resolved by *Scrope* in the Bishop of *Winchesters* case, not onely in respect of others, but in respect of the Members of Parliament themselves: for although they are to be tryed by their owne respective houses in things which concerne the Parliament, if the fact touch not the King; yet if it touch the King, and the case be prosecuted by him, they can not then take cognizance of it, except he thinks it expedient, who hath power if he please to try it in any of his other courtes, how soever the two pretended houses have exclaimed against it for a great breach of priviledge. Fitz. tit. coron. P. 3. E. 3. P. 161. *Ceux queux sount judges in Parliament sount judges de lour Pieres, mes le Roy navoit Piere in sa terre demesne, per que il ne doit per eux estre judge ne ailours fuire son suite vers cestui qui luy trespassa quant la ou luy pleist.* They which are judged in Parliament, are judged of their Peers, (*that is the Lords by the house of Lords, and the Commons by the house of Commons*) but the King can have no Peer in his owne land, and therefore he ought not to be judged by them, nor to make his processe against him that offends, but where he please himselfe.

Last of all they charge the King for attributing too much power and authority to himselfe. *And it is preached to the people in the Kings declarations that by the Supreamacy is meant a power inherent in the Kings* Person *without, above, against all his* courtes, *the*

the Parliament *not excepted, whereby the excellent lawes are turned into an arbitrary Government.* It is no wonder if the pretended houſes were more inclined to heare what their owne ſeditious divines preached in *Saint Margerets*, then what the King preached in his declarations; they which ſuſtaine ſuch a cauſe, can no more endure to heare, then to ſpeake the truth: yet I beleeve it had beene better for them if they had entertained his Majeſties *Perſon* and *Declarations* with more reſpect and dutie. Although for the preſent they ſeem to have ruined him and his people too, and to have advanced their owne intereſt by the ruine of them both; Yet they which have mounted to places of dignity and profit upon the dead bodies of the King and people, may finde in the ende, that *Rebellion* and *Murder* ſit not ſo high, but that *vengeance* and divine *Iuſtice* ſit above them. As for the charge which they bring againſt his Majeſty, it is partly falſe; his Majeſty never uſed ſuch expreſſions as they pinne upon him: where doth he ſay that he hath a perſonall power above and againſt the Parliament? let any man produce the wordes out of which he can force ſuch a ſence. He is himſelfe in *Perſon* head of the Parliament, and to ſay that he hath a Perſonall Power above and againſt himſelfe were to ſpeake as improperly, as the pretended houſes uſe to ſpeake in their owne declarations, which his Majeſty is not guilty of. Theire charge is alſo partly vaine and fri-

volous; for whereas they accuſe him for ſaying his ſupreamacy was inherent in his *Perſon*, they might as well accuſe him for ſaying he was *King*: Supreamacy is an eſſentiall attribute of Majeſty, and can not be ſeparated without the corruption of its ſubject; to ſay the *Kings* ſupreamacy is in his courtes and not in his perſon, is not onely to contradict the lawes, but the Common principles of reaſon. This hath been demonſtrated in divers places, yet becauſe occaſion is offered againe, I will here adde the reſolution of all the Iudges made in the firſt yeare of *Henry* the ſeventh concerning this matter; for a Parliament being then called, and both the *King* himſelfe, and divers of the Members, being attainded of high treaſon, it was reſolved by the Iudges that the attaindor of the Members ought to be adnulled before they could ſit in the houſe: but touching the *King* it was reſolved, that his attaindor was adnulled upon his admittance to the crowne, becauſe *the King is perſonable*, that is, becauſe his *K*ingly authority was inherent in his *Perſon*, by reaſon whereof he was diſcharged of all guilt againſt the lawes. *Et donques*
1.H.7.4. *fuit move un queſtion que ſerra dit pur le Roy meſme pur ceo que il fuit atteint, & puis communication ent enter eux, touts accordront, que le Roy fuit* Perſonable, *& diſcharge de aſcune atteind'* eo facto *q̄il priſt ſur luy le Reigne & c̄e Roy*. And then a queſtion was moved what ſhall be ſayd of the *King* himſelf for he was alſo attainted, and after commmunication had

had amongſt them, all agreed that the *King* was *Perſonable*, and diſcharged from all attaindor in the very act that he tooke the *Kingdome* upon him and became *King*. It is likewiſe ſhewed that the King hath not onely an abſolute juriſdiction in caſes extraordinary, which can have remedy no where elſe; but ordinary alſo, above all his courtes wherein he is but virtually preſent; yet for further illuſtration of the truth, I will here call to remembrance two places of *Bracton* alleadged before for other purpoſes, yet ſerving alſo to confirme the *Kings* ordinary juriſdiction. The firſt is *Sicut Dominus Papa in ſpiritualibus ſuper omnibus habeat ordinariam juriſdictionem, ita habet Rex in Regno ſuo ordinariam in temporalibus, & pares non habet, neque ſuperiores.* The ſecond is, *Dominus Rex ordinariam habet juriſdictionem, & dignitatem, & poteſtatem, ſuper omnes qui in Regno ſuo ſunt; habet enim omnia jura in manu ſua, quæ ad coronam & laicalem pertinent poteſtatem.* That in *Fleta* is alſo to be underſtoode of the *Kings* ordinary juriſdiction. *Potentia* Rex *omnes in Regno ſuo præcellere debet, quia parem habere non debet, nec multo fortius ſuperiorem in juſtitia exhibenda.* The *King* ought to have a ſupereminent power above all the reſt in his *Kingdome*, becauſe he ought to have no equall, much leſſe a ſuperiour in exhibiting juſtice.

Lib. 5. cap. 15.

Lib. 2. cap. 24.

Lib. 1. cap. 17.

CHAP. VIII.

Divers generall objections made by the Author of the treatiſe of Monarchy touching the limitation and mixture of the Engliſh Monarchy, and coordination of the two Houſes, anſwered. The nature of abſolute, limited, and mixed government, explained.

THe Author of the treatiſe of Monarchy, the fuller Anſwerer, and other pretended Parliamentarians, have invented a new forme of Government to delude the people, which they tell them is the Government eſtabiſhed in England; namely a *mixed Monarchy*, conſiſting of three eſtates, independent for their authority upon on another, all

all of them being coordinate, and having ſeverall ſhares in the rights of Soveraigntie, by the fundamentall lawes of the lande. A ſtrange kinde of *Monarchie*, not ſo much as heard of untill theſe times, much leſſe eſtabliſhed in England: for a *Monarchy* is the Government of *one alone*, as the Etymologie of the worde importeth; now to ſay the Government of *three Eſtates*, is the Government of *One alone*, doth not ſound halfe handſomly. Other Authours have ſpoken of *mixed Government*, and *mixed commonwealths*, but of *mixed Monarchy* in that ſence which they doe, none but themſelves have treated. For according to the verdict of other authors, when Monarchie, Ariſtocratie, and Democratie, are melted and alayed together, that which reſulteth can take its name from none of the ſimple ſpecies or kinds of Government, although the chiefe authority, or primity of ſhare belong to ony one of the eſtates: it is a ſoleciſme to call him a Monarch who hath not all the rightes of ſoveraigntie, and who hath them nor alone; where more then one do ſway the affaires of State, and have amongſt them a common empire, the forme of Government is Polyarchicall. Yet if they will needs have a mixed Government to be denominated from that kinde that hath predominancy, they might vvith better reaſon have called their new frame a mixed *Democratie*; this denomination (beſids that it is not ſo improper as the other, *Democratie*, implying the Govenment of

Beſol. Synopſ. polit. doct. lib. 1. cap. 9.

Beſol. lib. 2. cap. 4.

of the *people*, but not of the *people onely*, as Monarchie doth of the *Monarch alone*) is more agreable to the quality and nature of their platforme; for the *K*ings authority being ſo inconſiderable as they make it, the people in this mixture muſt needs be the predominant element. The Author of the *treatiſe of Monarchie* who ſeemeth to give moſt to the *K*ing, although in tearmes he grants him a primity of ſhare in the ſupreame power, yet in ſubſtance he would have it placed in the two houſes, attributing unto them ſuch authority, as they may thereby make him deprivable at their pleaſure. Now although the ſaid *Treatiſer* ſeemeth to be a *Poet* rather then a *Lawyer*, having many new fictions, but ſcarſly a worde of law in all his treatiſe, yet becauſe I can not conveniently reduce his objections to any of the other queſtions that are hereafter to be diſcuſſed, I will anſwer them in this place: But before I come to examine them, that all things may be cleare, and better underſtoode, I will, for perſpicuity ſake, ſpeak a word or two of the diuiſion and ſeverall *K*indes of *Abſolute*, *Limited*, and *Mixed* Government.

I will beginne with *Abſolute* Government of which there be three kindes; the firſt is *Abſolute* both in reſpect of power and alſo in reſpect of the uſe and exerciſe of it. In this kinde of Government the Supreame governours have perfect, *Abſolute*, full, and intire power; and in the exerciſe of it are ſubject to

no

no limitation made by any humane law, paction, or agreement, but are limited *ab externo* by the lawes of God and nature onely, being otherwiſe left to the free determination of their owne wills. This is alſo called *Arbitrary* Government, not becauſe ſuch Governours as have the free uſe of their power may doe what they pleaſe; for their power is bounded by the lawes of God and nature, and may not tranſgreſſe and goe beyond its limits: but becauſe it is not bounded by any humane poſitive law made to reſtraine and regulate it. The ends of Government may be attained ſeverall wayes in many particulars without breach of the Lawes of God and nature; now when a Governour is not directed to his end in any of thoſe particulars by humane conſtitution and appointement, but hath an open and free paſſage to act which way he pleaſe, his Government is *Abſolute* and *Arbitrary*. Amongſt all the ſeverall kindes of Government this onely is *jure Divino*, as being more ancient then any humane law that could be made to direct it, by vertue and authority whereof, humane lawes were at firſt enacted; all other ſortes were introduced by the policy of men, yet lawfull, humane Conſtitutions ſerving to conduct power to its end; making as it were a furrow, for it to paſſe in, and to conteine it, which otherwiſe is apt to overflow its bounds, and to degenerate into tyranny. The ſecond is *Abſolute* in reſpect of the power alone; In this kinde of Government the Supreame Governours

have as perfect, *Absolute*, full, and intire power as the former, their authority have the same latitud, and all the same dimensions; but they are limited *ab externo* in the use and exercise of it, eyther by originall and fundamentall constitution, or else by lawes made afterwards by speciall grace and condescention: so that although their powver be perfect, *Absolute*, full, and intire, in all respects, and able to produce all the effects of Government, yet they can not put it forth, and act by it according to their owne free election, or according to the full activity of it, but must act according to those limitations made and granted by law. The third is *Absolute* in respect of the exercise onely; In this kinde of Government the supreame authority is committed for a certaine time, but not translated, to one or more, who by vertue of the said commission may exercise the powver in an *arbitrary* manner during the time assigned them. Such were the *Dictators* of the *Romane Commonwealth*, who ruled as *arbitrarily* all the time of their *Dictatorshipe*, as the most *Absolute* Monarchs in the world, yet the supreame authority remained in the *Senate*: And such are they who exercise Royall powver in the minority of Princes whose Government is *Absolute* and *Arbitrary*.

There are also three kindes of *Limited* Government answereable to absolute; the first is *Limited* both in respect of Powver, and also in respect of the use

uſe and exerciſe of it; In this kinde of Government there are alvvayes more Governours then one, vvhich are all *Limited* in the very eſſence and being of their povver, having none of them perfect, abſolute, full and intire authority, but onely their ſeverall ſhares and proportion: neyther can they act in an arbitrary manner according to the full extent of that povver vvhich they have, but have a certaine rule ſet them by lavv. The ſecond is *Limited* in reſpect of the povver alone; In this kinde of Government as in the former there are alvvayes more Governours then one vvhich have all their *Limited* ſhares, yet may all act arbitrarily eyther joyntly together, or every one within the *pale* and *limits* of his ovvne authority. The third is *Limited* in reſpect of the exerciſe onely; In this kinde of Government, the Governours are abſolute in regard of power, but circumſcribed and Limited in the Acts of it.

As of abſolute and limited ſo there are likewiſe three kinds of *Mixed* Government ſutable to the other; the firſt is *Mixed* both in reſpect of power and alſo in reſpect of the uſe and exerciſe of it. In this kinde of Government there is a mixture of ſeverall powers which compound and make up one perfect, abſolute, ful, and intire power; and alſo of ſeverall perſons, and eſtates, to vvhome the ſaid powers do radically and fundamentally perteine, vvhich do jointly concurre in rhe adminiſtration and exerciſe of them. The Second is *Mixed* in re-

ſpect of the povver alone ; In this kind of Government ſeverall perſons and eſtates are mixed together in the poſſeſſion of povver, but one alone do exerciſe all the acts of Soveraigntie, In this manner vvas the *Roman Commonwealth* governed by *Sylla*; and by *Dictators* in the time of exigence and neceſſity. The third is *Mixed* in reſpect of the exerciſe onely ; In this kinde of Government ſeverall perſons and eſtates are *Mixed* in the exerciſe of power, but one of the eſtates alone hath the dominion, and propriety of it.

Novv touching the Government of *England*, I have ſhevved already that it is Monarchicall , that the Monarchie is *Abſolute* , in reſpect of the *power*; that the King alone hath perfect , *Abſolute*, full , and intire juriſdiction, able if put in action , to effectuate, and bring to paſſe , all the endes of Government: and that all other perſons , of all eſtates and degrees vvhatſoever, both Nobles, and Commons,move in their ſeverall circuits, and ſpheres of activity , by virtuall emanation from him , and not by force of any povver, authority , or juriſdiction inherent in themſelves. And indeed all Monarchies are *Abſolute* in this reſpect ; that is , in reſpect of the povver , for vvhen the limitation is in the eſſence and being of povver, Monarchie is deſtroyed , not limited.

But yet the Engliſh Monarchie is *Limited* in reſpect of the uſe and exerciſe of povver , the King being obliged to govern according to the lavves of the

the lande, vvhich although they doe not diminiſh Majeſty *in eſſentialibus*, yet they do diverſly qualify, and modificate it. It is alſo *Mixed* in the ſame reſpect, the King being obliged in ſome caſes not to uſe his power without the aſſent and concurrenee of the two other eſtates. The pretended Parliamentarians, on the other ſide, deny the Engliſh Monarchie to be *Abſolute* in any reſpect; and affirme it to be *Limited*, and *Mixed*, as well in reſpect of the power it ſelfe, as in reſpect of the uſe and exerciſe thereof, the two houſes of Parliament being coordinate with the King, not onely in the adminiſtration of power, but in the poſſeſſion of it. Yet they are not able to alleadge one ſillable of law to make good theſe ſtrainge novelties, but ſtrive by indirect inferences to deceive the people. Howſoever I will bring their objections, ſuch as they are, and anſwer them in order: and firſt I vvill bring their objections vvhereby they endeavour to prove their pretended limitation, and then thoſe vvhereby they endeavour to prove their pretended mixture.

1. Objection touching limitation.

I conceive and am in my judgement perſwaded, Saith the Treatiſer, *that the Soveraigntie of our Kings is radically and fundamentally limited, and not onely in the uſe and exerciſe of it: and am perſuaded ſo on theſe groundes, and reaſons. Firſt, becauſe the Kings Majeſty himſelfe, who beſt knowes by his counſell the nature of his owne power, ſayes, that* the lavv is the meaſure of his

Declar. from Newmarket Mart. 9. 1641.

povver : *Which is as full a conceſſion of the thing as* wordes *can expreſſe. If it be the meaſure of it, then his power is limited by it ; for the meaſure is the limits and boundes of the thing limited. And in his anſwer to both the houſes concerning the* Militia *Speaking of the men named to him, ſayes,* If more povver ſhall be thought fit to be granted to them then by lavv is in the crovvne it ſelfe, his Majeſty houldes it reaſonable, that the ſame be by ſome lavv firſt veſted in him, *with power to transferre it* to thoſe perſons. *In which paſſage it is granted, that the powers of the crowne are by law, and that the King hath no more then are veſted in him by law.*

2. Objection. *Secondly becauſe it is in the very conſtitution of it mixed as I ſhall afterwards make it appeare, then it is radically limited, for as I ſhewed before every mixed Monarchie is limited, though not on the contrary : For the neceſſary connexion of the other power to it, is one of the greateſt limitations, a ſubordination of cauſes, doth not ever prove the ſupreame cauſe of limited vertue, a coordination doth alwayes.*

3. Objection. *Thirdly, I prove it from the ancient ordinary and received denominations ; For the Kings Majeſty is called our* liege, *that is,* legall Soveraigne ; *and we his* liege, *that is,* legall ſubjects. *what do theſe names argue but that his Soveraigntie and our ſubjection is legall, that is reſtrained by law?*

4 Objection. *Fourthly had we no other prooſe, yet that of preſcription*

ſcription were ſufficient: in all ages beyond record, the lawes and cuſtomes of the Kingdome, have been the rule of Government; liberties have been ſtood upon, and grantes thereof, with limitations of Royall power, made and acknowledged by Magna Charta, *and other publike and ſolemne actes; and no obedience acknowledged to be due but that which is according to law, nor claimed but under ſome pretext and title of law.*

Fiftly the very being of our Common and Statute lawes, and our Kinges acknowledginge themſelves bound to govern by them doth prove and preſcribe them limited: For thoſe lawes are not of their ſole compoſure, nor were they eſtabliſhed by their ſole authority, but the concurrence of the other two eſtates: ſo that to be confined to that which is not meerly their owne, is to be in a limited condition. 5. Objection.

Before I come to anſwer his objections out of his owne mouth will I condemne him; for if his heart and his tongue goe together, if he be perſuaded, as he ſaith in his firſt objection, that the King by his Counſell knevv the nature of his ovvne povver beſt, why hath he acted contrary to his Majeſties declarations? vvhy hath he, againſt his conſcience, affirmed it to be lavvfull for the tvvo houſes to take up armes againſt him? he knovvs his Majeſty vvas never of that opinion. Novv to his objections I ſay that the ſecond, and fift, proceede upon Reply.

upon his ovvne principles, namely, that the Monarchie of England is mixed in the povver it ſelfe, and that the Legiſlative povver is not in the King alone, but jointly in the three eſtates: If theſe principles vvere true his objections vvere materiall; but I have ſhevved the contrary, and ſhall yet ſhevv it further hereafter. In his other three objections he doth not ſo much as touch the queſtion propounded; he layeth dovvne this concluſion to be proved, *That the Kings Soveraignty is radically and fundamentally Limited, and not onely in the uſe and exerciſe of it*, but endeavoureth to prove no more then that it is limited in generall, vvithout ſpecifying vvhether radically and in the eſſence and being of it, or in the exerciſe onely. A legall moderation and limitation of Royall povver, as farre as I knovv, is denyed by none, although the Treatiſer be pleaſed to lay a falſe imputation upon ſome Divines, becauſe they hould it not limited iu the ſame manner vvhich he hath repreſented it: The Kings Soveraignty to be radically and fundamentally limited, and not onely in the uſe and exerciſe of it, is, in the ſence by him explained, to be ſo limited, that his Majeſty ſhall not onely be reſtrained in the uſe aud exerciſe of ſupreame povver, but ſhall alſo be ſtinted in his ſhare of it, and have no more then a ſingle parte, tvvo other partes of the ſaid povver belonging to the other eſtates. Novv that he may deceive the people, he maketh a ſhevv as if he had gained his purpoſe by

by proving the Kings power to be limited in generall, whereas he knoweth well enough that there is a great difference betweene being limited, and being ſo limited by law. The Kings power to be meaſured and limited by law, includs no more then that his power is of ſuch a ſize and bigneſſe as the law hath ordained; if the law giveth him perfect, abſolute, full, and intire power, and limits him onely in the exerciſe of it, this is a reſtraint and limitation according to law, yet not in the eſſence and being of power. And indeed this is the true and onely limitation of Monarchie, whereby the Monarchs power is limited *ab externo* by humane lawes and conſtitutions, and not by the free and arbitrary reſolutions of his owne vvill, and yet Monarchie preſerved intire. But vvhen the rightes of Soveraigntie are divided and placed in ſeverall Eſtates vvhich limit one another, ſuch a limitation is inconſiſtent with Monarchie. But the Treatiſer objecteth further againſt this anſwer, that where the limitation of power is onely in the exerciſe of it and not in the povver it ſelfe, all acts of Government are reſolved at laſt into the arbitrary vvill of the Monarch: for although he be limited in the exerciſe of povver by lavv, or promiſe, yet if he vvill conrrary to lavv and promiſe ſinfully put it forth, his povver is authoritative and may not be reſiſted: this is the full ſcope and ſumme of that which he replieth to Doctor *Fern* vvith no ſmall oſtentation. *A legall reſtraint*, ſaith he, *you ſeem*

Pag. 11. *to acknowledge ; but ſuch an one as reſolve into the arbitrary will of the Monarch , as I have made it appeare in my former treatiſe , which you will never be able to wipe of by this or any other reply.* If this reply were ſtrictly examined it would appeare farre unworthy ſuch boaſts and braggs as are brought to ſet it out ; but I ſhall onely in breefe ſhew the inſufficiency of it, and ſo let it paſſe. Firſt therefore I ſay that we do by this aſſertion no more reſolve Monarchie, then he reſolves his mixed Commonwealth, into an arbitrary Government. For although in a mixed Government every one of the eſtates hath but a limited ſhare , yet taken together they have perfect, abſolute, full, and intire power , which if they will contrary to law or promiſe ſinnefully put forth, it is as authoritative and unreſiſtible as if it were in one man. He will grant, I ſuppoſe, the power of Government to be equall in all commonwealths , and that there can be no eſſentiall but onely an accidentall difference between them ; for all commonwealths have a ſufficiency of power to attaine to all the ends of Government , and to make proviſion for all occurrencies , which can not be otherwiſe limited then in the exerciſe : This he confeſſeth in an other place ; for diſputing about the limitation of power in the eſſence and being therof , and having made an objection againſt it, in anſwering the objection he ſaith , *ſuch a limitation can not be where*

Pag. 23. *power is ſupream, but for limitation to a rule and defi-*

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ned vvay of working, I can not ſee hovv it vvithſtands the end of Government, which, if I doe rightly underſtand his meaning, is the ſame in other tearmes that he confutes in Doctor *Fern*, and doth expreſly conclude that the povver of Government taken *in ſua latitudine* can not be limited in the eſſence and being of it, but in the uſe aud exerciſe onely; for, to be limited to a rule ad defined way of working is to be limited in the exerciſe, but not in the eſſence of power. If then all acts of Government are reſolved into the arbitrary will of the Governours where the limitation of power is onely in the exerciſe of it, doth he not himſelfe reſolve his mixed commonwealth into an arbitrary Government? But ſecondly I ſay, that to limit power in the exerciſe of it, is ſo farre from reſolving all caſes into the arbitrary will of the Governour, that it is the onely way and means to reſtraine arbitrarineſſe: the limitation of power in the eſſence and being of it alone, is not ſufficient to reſtraine it; for vvhen a power is limited in its eſſence and being, and terminated onely within its owne intrinſique boundes, ſuch a limitation is oppoſed to an *Infinite*, but not to an *Arbitrary* activity. When the three Eſtates have all their limited ſhares, yet they may all act *arbitrarily* according to the extent of that power which they have, not onely when they act joyntly together, but in the adminiſtration of their ſeverall charges, if their power be not regulated by law in the exerciſe of it;

it is not the limitation of power therefore in the eſſence and being of it, but in the exerciſe, which denominats and conſtituts a limited Government. Power which is limited in the eſſence and being of it onely, although it can not act *arbitrarily* in ſo great a latitud as when it is intire and abſolute, yet it may act *arbitrarily* within its owne bounds if it be determined onely by the will of him that acteth by it, and not by a certaine rule of law. Beſids the former objections the Treatiſer in his reply to Doctor *Fern* hath added others which proceed upon one of their owne principles, namely that all authority and power is originally in the people, from whence he inferreth that they may tranſlate as much and as little as they pleaſe to their Governours, and ſo limit their power in its being and eſſence. But becauſe they ſpeake not *de facto* but *de poſſibili*, and becauſe I ſhall handle theſe things *ex propoſito* in the third queſtion, I will referre them to their due place.

2. Objection touching mixture.

I come now to the objections whereby they endeavoure to prove the Engliſh Monarchy to be a mixed Monarchy. *I conceive it*, ſaith the Treatiſer, *a cleare and undoubted truth, that the Authority of the land is of a compounded and mixed nature in the very roote and conſtitution thereof, and my judgement is eſtabliſhed on theſe grounds. Firſt, it is acknowledged to be a Monarchie mixed with Ariſtocracy in the houſe of peers, and democracy in the houſe of Commons.*

Anſwer to the 19. propoſitions.

Now

Now (as before was made appeare in the first part) it is no mixture which is not in the roote and supremacy of power: For though it hath a subordination of inferiour officers, and though the powers inferiour be seated in a mixed subject, yet that maks it not a mixed Government; for it is compatible to the simplest in the world to have subordinate mixtures.

His Majesty acknowledgeth Monarchie to be so mixed with Aristocratie and Democratie in the exercise of some part of his power, that the conveniences of all those formes of Government, without the inconveniences of any of them, are obtained by such a mixture; But he denieth the mixture to be in the power it selfe, for the convenience which he saith it hath from Monarchie, is, that it is Governed by *one Head*: Where by *one Head*, he meaneth not, *one* by mixture, but *one* single Person, *one* pure and unmixed subject, that hath all power and authority alone. The Treatiser, I conceive, hath purposely omitted his wordes, that his sence might not appeare; but I shall cite them in the next chapter, and shew the true intention and meaning of them. Now whereas his Majesty hath acknowledged a mixture, to inferre from thence that he granted the mixture to be in the power it selfe, because the other kinde is not a true, but an improper kinde of mixture, is a straingе and unusuall way of argumentation. If his Majesty was in an errour, and apprehended that

to be a true mixture, vvhich is not, all that can be concluded thereupon, is, that he miſunderſtoode the true nature of mixture, not that he granted the mixture to be ſuch as they contend for; vvhen it is evident that a man deny a thing *in terminis*, there is neither candour nor ingenuity in thoſe, vvhich will by conſequences argue him to affirme it: Some accuſe the *Romane Catholiques* of *Idolatrie*, becauſe they affirme ſuch things, as in their conceit ſeeme by way of conſequence to allow it; but no man was ever ſo voyd of ingenuity as to diſpute the queſtion *whether Idolatrie be lavvfull*, and then cite them for *Authours* that maintaine it to be lavvfull: In like manner ſome accuſe *Calvine* of *Turciſme*, becauſe he affirme ſuch things, as in their conceit ſeeme by vvay of conſequence to juſtify the practice and religion of the *Turcks*; but no man was ever ſo unreaſonable as to diſpute the queſtion *vvhether the Turckiſh religion be the true religion*, and then cite him for an *Authour* that maintained it to be true; becauſe it is evident that if thoſe queſtions were propounded *in terminis*, the *Romane Catholiques* would deny *Idolatry to be lavvfull*; and *Calvine*, if he were alive, *the Turckiſh religion to be the true religion*, what conſequences ſoever other men draw from their wordes. Yet the Treatiſer dealeth in this manner with his Majeſty; for although it be evident, that his Majeſty denied, *in terminis*, the mixture of the Engliſh Monarchie *to be in the povver it ſelfe*, yet he

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argues him by conſequences to affirme it: this to the Antecedent. But ſecondly the conſequent is alſo falſe; the miſtake is in himſelfe not in his Majeſty: vvhy is it no mixture, vvhich is not in the roote and ſupreamacy of povver? he anſvvereth, *Though it hath a ſubordination of inferiour officers, and though the powers inferiour be ſeated in a mixed ſubject, yet that maks it not a mixed Government; for it is compatible to the ſimpleſt in the world to have ſubordinate mixtures*, vvhat if no Goverment in the vvorld be ſo perfectly ſimple as to exclude all ſubordinate mixtures? it doth not followv from thence, that *it is no mixture which is not in the roote and ſupreamacy of power*, but the contrary; for a ſubordinate mixture is a mixture. I ſhall alſo deny the very ground and foundation of his argument; ſuch ſubordinate mixtures, as are in the Engliſh Monarchie, are not compatible to the ſimpleſt Government in the vvorld, for vvhere the Government is arbitrary and abſolute both in reſpect of povver, and in reſpect alſo of the uſe and exerciſe of it, ſupreame Governours can put forth all the actes of povver and juriſdiction alone; they can make lavves, rayſe taxes, and exerciſe their vvhole povver, according to the full activity of it, vvithout the concurrence of the other eſtates: and although they do often make uſe of their direction and aſſiſtance, yet this mixture in the exerciſe of povver proceeds not from the conſtitution of Government, but from their ovvne volun-

voluntary election, chooſing this as the moſt conducible means to obtaine the endes of Government. For although they may act according to the full activity of their povver, yet they can not act in perſon at all times and in all places, nor is one mans vviſdome ſufficient to meet vvith all the Events and accidents of Government, by reaſon vvhereof they are driven to ſeeke a remedy againſt ſuch inconveniences as vvould ariſe from theſe and the like cauſes; and if, vvhen they find no better, they ſubſtitute others and give them authority to act vvith them in the exerciſe of povver, this voluntary mixture can not have ſuch an effect as to denominate a Government mixed, becauſe it depende upon the the immediate vvill of the ſupreame Governour, vvho may rule and actuate all his intentions and purpoſes vvithout them, vvhere and vvhen he pleaſe: and vvhether he acts vvith them, or vvithout them, the frame of Government is ſtill the ſame; for it is the conſtitution of a Government that ſpecificate it, and cauſeth it to be denominated mixed, or ſimple. And therefore vvhereas the Treatiſer ſaith *though the powers inferiour be ſeated in a mixed ſubject, yet that maks it not a mixed Government*, this is falſe vvhen the povvers inferiour are ſeated in a mixed ſubject by the conſtitution of the Govvernment, and not by the immediate vvill of the ſupreame governour. There is a great difference then betvveen ſuch ſubordinate mixtures, and the ſubordinate

dinate mixture that is in the Engliſh Monarchie, thoſe are mutable, uncertaine, depending upon the will of the Supreame Governour, this immutable, certaine, depending upon the conſtitution of the Government: for whether it vvas effected by originall contract vvith the people at the firſt foundation of the Monarchy, or whether it vvas eſtabliſhed aftervvard by the voluntary grant and conceſſion of ſome of our Kings, or vvhether it vvas introduced by cuſtome, the Government is now ſo conſtituted, that the King can not make lawes, rayſe ſubſidies, or exerciſe ſome other acts of his povver, vvithout the aſſent of the two other eſtates. So that the very conſtitution of the Government is mixed in ſome reſpect, namely in reſpect of the exerciſe of ſome acts of povver, vvhich happeneth not in Commonwealths vvhere the Government is arbitrary. Beſids that vvhich is here alleadged, the Treatiſer bringeth other objections in his reply to Doctor *Fern*, againſt mixture in the uſe and exerciſe of povver. *Ariſtocracy and Democracy*, ſaith he, *are powers, not Perſons, as well as Monarchy: therefore a compoſition of theſe three muſt be all of powers, and indeed this* Chimera *of a mixture in the exerciſe of power is plaine* non ſence, *for a mixture in the acts or exerciſe ſuppoſeth a mixture in the principles of action, that is in the very powers: A mixt act proceeding from a ſimple power, is ſuch Stuffe that I never heard before.* Pag 31. First he ſaith that *Ariſtocracy and democracy*

are powers not persons, as well as Monarchy; and this he taks for granted, vvhich is both an apparent falsity, and a *Solecisme*; for Monarchie, Aristocratie, and Democratie, are neyther povvers, nor persons, but formes of Government equally relating to both, the vvordes, according to their etymologies, noting persons as vvell as povvers; and vvhen these are mixed together it is the mixture of persons, not of povvers, that denominate a mixed forme of Government, as I shall shevv immediatly. Secondly he saith that *a mixture in the exercise of power is plaine* non sence *for a mixture in the acts or exercise supposeth a mixture in the principles of action, a mixt act proceeding from a simple povver is such stuffe that I never heard.* Here in stead of lavv he bringeth an *Axiome*, eyther of his ovvne coyning, or taken out of some *Authour* that vvriteth *De causa & causato*, to confirme his mixture; such axioms are no authenticall proofes vvere they generally true, vvhich for the most part they are not, but admit of divers limitations: it is a very difficult matter to prove vvhat kinde of Government is established in any commonwealth, by *Bedas Axiomes*, or the *Axiomes* of any other *Authour*; it had been more seasonable vvhilst he vvas *mixing* the rights of Maiesty, if, in making his assertion good, he had *mixed* a little *Law* vvith his *Philosophy* and *Logique*. But as his *Axiome* is not authenticall, so vvithout divers restrictions, it is not true; A mixed act may proceed from

But where they are but partially mixed that is, where the mixture of the three Eſtates is in the exerciſe of power alone, there the ſimple formes of Government are not deſtroyed by ſuch a mixture, but ſuffer onely an accidentall change. This is a light mixture in compariſon of the other, but as great as is conſiſtent with any of the ſimple formes of Government; and as true a mixture as the former, which although it doth not totally corrupt, yet it doth manifeſtly allay the ſimplicity of a Government: for where ſeverall eſtates have intereſt by the conſtitution of a Government in the exerciſe of power, the Government is not ſo ſimple, as where one of the eſtates alone have all the intereſt.

Secondly that power where the legiſlative power is in all three, is in the very roote and eſſence of it compounded and mixed of thoſe three; for that is the height of power, to which the other partes are ſubſequent and ſubſervient: ſo that where this reſideth in a mixed ſubject, that is in three diſtinct concurrent eſtates, the conſent and concourſe of all moſt free, and none depending on the will of the other, that Monarchy is in the moſt proper ſence and in the very modell of it of a mixed conſtitution: but ſuch is the ſtate of this Monarchie, as appeares in the former queſtion, and is ſelfe-apparent. 2. Objection.

This objection is ſoone anſwered by that which hath been ſaid in the fifth chapter; but becauſe it is their principall objection, I will more at large

ſhew the invalidity of it : firſt therefore I anſwer to the antecedent, that the concurrence of one or both the other Eſtates with the Monarch in the making and promulgation of lawes is no good colour or pretence, much leſſe a ſufficient ground for ſuch a coordination and mixture as is preſſed by them: Although their aſſents be free, and not depending upon the will of the Monarch, they are not thereby coordinate with him in the rights of Soveraignitie. It is the common aſſertion of [a] *Canoniſts*, [b] *Civilians*, and [c] *Schoolemen*, nor is it to my knowledge contradicted by any, that the Legislative power is delegable, [d] that ſuch a concurrence is no argument of Supreamacy, or of ſuch a mixture as they would inferre out of it : [e] Some call it therefore *apparens mixtura* becauſe it ſeemeth to deſtroy a ſimple forme of government, and to make a mixture in the power it ſelfe, but doth not; though otherwiſe they acknowledge it to be ſuch a mixture as doth remit the ſimplicity thereof. *Grotius* affirmeth to this purpoſe, *Iſtam legiſlationem, quæ alii quam ſummæ poteſtati competit, nihil imminuere de jure ſummæ poteſtatis; quod in Scholis dicunt, cumulativè datam cenſeri, non privativè.* He ſpeaketh this of lawes made by generall conventions whoſe concurrence, he ſaith, doth not in the leaſt manner diminiſh the rights of Majeſty. Such a mixture of the three eſtates hath been in other Monarchies which all men acknowledge to have been abſolute

[a] Panormit. cap. gravem de ſententia excommun.
[b] Bertol. in L. omnes populi ff. de juſtitia & jure q. 2. princip. quæſtiunc. 5. num. 20.
[c] Suarez lib. 1. de legibus lib. 1. cap. 8. num. 9.
[d] Beſold de jurib. Majeſt. c. p. 2.
[e] Arniſæ doct. polit. lib. 1 cap. 8.

De imperio ſummarum poteſtatem circa ſacra, cap. 8. num. 11.

in

from a ſimple cauſe, the *Sunne* doth by the ſame power heate, reſolve, and harden, at the ſame time; for the vertue of naturall Agents is diverſly modificated of the ſubject wherein it is received, and acteth variouſly according to the ſeverall diſpoſitions thereof. And yet if his *Axiome* were authenticall, or true, it is not pertinent; for what have we to do with mixed acts? the queſtion is, whether the mixture of ſeverall eſtates in the exerciſe of ſome acts of power be not a true mixture, ſufficient to denominate a mixed Government; how doth it follow now that it is no true mixture becauſe a mixed act can not proceed from a ſimple power? If that were true, yet a mixed forme of Government may proceed from the mixture of ſeverall perſons and eſtates: the diviſion of Government into ſimple and mixed, is made in reſpect of the perſons, and eſtates, not of the power, which remains the ſame under all formes and changes of Government, and can not properly *& per ſe*, but improperly *& per accidens* be ſaid to be mixed; for it is mixed onely *ad mixtionem ſubjecti*, when it is ſeated in a mixed ſubject, being otherwiſe the ſame that it is in a ſimple: and when a ſimple forme of Government is changed into a mixed, or a mixed into a ſimple, the power ſuffereth not the leaſt alteration, but is denominated ſimple or mixed, according as it is ſeated in a ſimple or mixed ſubject. This is the Common aſſertion of all Authours, who do generally teach the diverſity of Com-

monwealths to ariſe from the diverſity of Perſons, their ſimplicity and mixture, from the ſimplicity and mixture of Perſons, and eſtates; not from the diverſity, or from the ſimplicity and mixture of powers. *Quoad imperium haud diſcriminamus ſpecies rerum publicarum: Siquidem in qualibet Rep. deprehendere eſt ſummam legibuſque ſolutam poteſtatem; verum quoad eos penes quos imperium eſt, differentia reipublicæ formarum fieri debet, eoque nomine aut Monarchicus aut Polyarchicus ſtatus eſt, Polyarchicus ſtatus aut ſimplex, aut vero mixtus exiſtit. Beſold. tit. de Reg. legit. Frederic. Tileman. Diſp. Digeſt. 2. theſ. 8.* We diſtinguiſh not the formes of Commonwealths by power, for there is a ſupreame power above the lawes in every Commonwealth; but the difference ariſeth from the perſons in whom the power is ſeated: and in that reſpect the ſtate of a Commonwealth is eyther Monarchicall, or Polyarchicall; the Polyarchicall ſtate is eyther ſimple or mixed. Now where the ſeverall formes of Government are totally mixed, that is, where the mixture of the thres Eſtates is both in the power and in the exerciſe of it, there the ſimple formes of Government are corrupted, and that which reſults out of their mixture and corruption is an other forme diſtinct from them all, which by authours is generally called a *mixed Commonwealth:* this kind of Government is alwayes Polyarchicall, ſuch a mixture being incompatible to Monarchie.

But

in reſpect of power; In the *Perſian* Monarchie, how abſolute ſoever, the other Eſtates had intereſt vvith the Monarch in the legiſlative power, as appeareth by that paſſage of *Daniel*, wherin the Princes, Governours, and others officers of *Darius* ſought to betray him by a law. *Then theſe Preſidents and Princes aſſembled together to the King, and ſaid thus unto him, King* Darius *live for ever, all the Preſidents of the Kingdome, the Governours, and the Princes, the Counſellours, and the captaines, have conſulted together to Eſtabliſh a Royall Statute, and to make a firme decree, that whoſoever ſhall aſke a petition of any God or man for thirty days ſave of the, O King, he ſhall be caſt into the den of Lyons. Now, O King, Eſtabliſh the decree and ſigne the writing that it be not changed, according to the law of the* Medes *and* Persians *which altereth not, wherefore King* Darius *ſigned the writing and the decree.* Theſe Princes, Governours, and Officers of *Darius*, had the ſame authority in making lawes that the Lords and Commons have in England; yet vvere not coordinate vvith the King: They had *votum Conſultivum* and *Deciſivum*; theſe vvordes, *have conſulted to eſtabliſh a Royall Statute*, include both an act of Counſell, and an act of authority and juriſdiction. *Grotius* ſaith they ſigned the decree as vvell as the King, and that they had this authority by the conſtitution of the Government: And the ſequele of the hiſtory doth imply as much; for had the act been

Dan. cap. 6. vers. 7. &c.

In Dan. cap. 6.

been his alone, had he ſet out this decree by vvay of Edict or Proclamation, he might have altered it himſelfe, as *Ahaſuerus* did the decree he ſet out touching the deſtruction of the *Iewes*: but being made by the aſſent of others who had a concurrent authority vvith him by lavv, he could not alter it. I ſhall not need to inſtance in the *Romane* Empire, or in other Kingdomes, for it is generally knovvne that ſuch a mixture vvas in that, and hath been, and is, in moſt other Monarchies. And not onely vvhole repreſentative bodies, but divers particular *free Citties* have the ſame priviledge; yet have not ſupreame authority. In our ovvne Kingdome the Common counſell of every *Incorporation* have authority to make ordinances and conſtitutions within their ovvne liberties, for the good order and Government of their body. The inhabitants of every *Pariſh* have authority to make Bylavves and Ordinances amongſt themſelves for their ovvne profit, vvhere they have cuſtome for it; and for the publique good, vvhere they have no cuſtome. Coke part. 5. in the Chamberlaine of Londons caſe; tit. Caſes de Bilavves & ordinances. *Inhabitants dun ville, ſauns auſcun cuſtome poyent faire ordinances ou Bylavves pur reparation del Egliſe, ou dun haut voy, ou daſcun tiel choſe, que eſt pur le bien publique generalmẽt, & in tiel caſe le greinder part liertouts ſauns aſcun cuſtome. Vide* 44. E. 3. 19. *Mes ſi ſoit pur lour private profit dẽm, comme pur le bien ordering*

Eſter 3. 12. 13. & 8. 10. 13.

dering de lour Common de paſture ou ſemblables ; la Sauns cuſtome ils ne poient faire Bylawes. The Inhabitants of a parriſh without any cuſtome may make Ordinances and Bylawes for the reparation of a Church or of the high waye , or any other thing that is for the pubique good in generall, and in ſuch a caſe the greater part ſhall binde the leſſe. But if it be for theire owne profit, as for the ordering of their Common , or the like , there without Cuſtome they can nôt make Bylawes. Why doth not the Treatiſer and the pretended Parliamentarians conclude from hence that every man is coordinate with the King in the rightes of Soveraigntie ? for this is done by the legiſlative power , and this authority they have by the conſtitution of the Government.

But ſecondly I anſwer to the conſequent , that the Legiſlative power is not radically in the three Eſtates , but in the *King* alone ; for although their aſſent be free and dependeth not upon his will , yet their authority is derived from him : he ſhould have proved his conſequent , which he ſaith appeareth in the former queſtion, where indeed he doth confidently affirme the whole latitud of the Nomothetical power to be jointly in the three eſtates, yet offereth not to prove it. But there is ſcarſly any man in the Kingdome, ſo much a Strainger to to the lawes, but knows that the *King* alone hath power to diſpence with the Statutes , and to abate their ri-

gour vvhere a miſchiefe would otherwiſe inſue; that he alone hath power by edicts and proclamations to order all affaires for vvhich there is no order taken by certaine and perpetuall lavves, that he vvith his judges hath povver to declare the meaning of the lavv, and to give an authentique interpretation to ſtatutes of ambiguous and doubtfull ſence. The King can exerciſe theſe and all other partes of the Nomotheticall povver vvhich are of abſolute neceſſity to Governement vvithout the aſſent of the tvvo houſes, vvhoſe concurrence is onely neceſſary in making lavves vvhich ſhall bind poſterity, and may not be repealed vvithout the conſent of the people, as vvell as of the King. And vvhen ſuch lavves are made it is the *Kings* authority that givs life unto them, they having othervviſe no povver to oblige the conſcience then as they are his commands. This hath been ſufficiently confirmed already, yet I vvill here further illuſtrate the truth by the teſtimonies of [a] *Bracton* and the Authour of [b] *Fleta*, vvho applying that paſſage of the civill Lavv, *Quod Principi placet legis habet poteſtatem*, to the *King* of England, ſay, that clauſe ought not to be underſtood of every thing that is raſhly preſumed to be his vvill, but of that vvhich is juſtly determined upon good advice and deliberation by the councell of his Magiſtrates, *Rege Authoritatem præſtante*, the *King* giving it authority, and confirming it for a lavv: and from hence by an argument

[a] Lib. 3. cap. 9.
[b] Lib. 1. cap. 17.

ment *ab indecoro* they ſhew that the King ought not to doe unjuſtly, *Cum ipſe ſit Author juris non debet inde Injuriarum naſci occaſio, unde jura naſcuntur*, vvhen he Himſelfe is the Authour of the lavv, injuſtice ought not to ſpring from the ſame fountaine from vvhence the lavv doth ſpring. The legiſlative authority is in the King therefore as in its ſpring and fountaine, and in the other Eſtates by derivation; they have right and intereſt in the uſe and exerciſe of ſome partes of the povver, and may aſſent or diſſent vvhat ſhall be made a lavv, but the povver it ſelfe is radically in him. Novv the legiſlative povver is either *Architectonicall* or *preceptive*: the Architectonicall povver is that vvhich layeth the materialls of a lavv, and it conſiſteth in tvvo things. Firſt, in determining vvhat is juſt, convenient, or neceſſary, to be enacted; they to whome this povver is committed, have no juriſdiction granted them, but onely an office and imployment to deliberate and conſult. Secondly, in declaring and promulgating that to be actually made a lavv and enacted, vvhich upon conſultation is thought to be juſt, Convenient, or neceſſary; they to whom this power is committed, have a juriſdiction granted them to define authoritatively what ſhall be a law. The preceptive power is that which impreſſeth a character upon the law that maketh it ſacred and inviolable, and which giveth it force to oblige the conſcience. It is evident that both partes of the

Architectonicall povver is committed to the tvvo houſes, they have *votum conſultivum & deciſivum* both authority to conſult vvhat is juſt, convenient, or neceſſary; and alſo to decree vvhat ſhall be made a lavv: but this authority is derived from the King. It is not much materiall to the preſent queſtion if it be granted alſo that they have a Preceptive povver; yet the lavv giveth them not ſo much. The Treatiſer in his reply to Doctor *Fern* ſeemeth to be unſatiſfied vvith this anſwer and doth there diſpute againſt it after this manner, *my ſecond argument* Pag. 39. ſaith he *for radicall mixture, is from the Legiſlative povver being in all three*: *He anſwers*; that phraſe is ſatisfied and explained by that concurrence and conſent in the exercife of ſupreame povver. *It ſeems that invention of his muſt ſerve all turnes, is a legiſlative power ſatisfied by a bare powerleſſe conſent? I demande: is that conſent cauſall and authoritative? or meerly conſiliarie and unauthoritative? And vvhereas I prove that they have an enacting authority by that received and ſet clauſe in the beginning of acts*; Be it inacted by the Kings moſt excellent Majeſty, and the authority of the Lordes and Commons aſſembled in Parliament. *He tell us a vote and power of aſſenting is a great authority, I enquire not how great it is: I aſke vvhether that be all; vvhether that clauſe, vvhich as expreſſely as vvordes can, aſſcribs an enacting authority to them, be ſatisfied by ſuch a power of aſſenting.* Here are many

many vvordes heaped together, yet not ſo much as one that toucheth the preſent controverſie: the queſtion is not, whether the two houſes have authority, nor yet vvether they have an enacting authority; it is evident they could not ſit as judges in the court vvithout authority, nor enact vvithout an enacting authority: but the queſtion is, firſt, vvhether their enacting authority ſpoken of in the foreſaid clauſe be onely a povver of aſſenting that ſuch or ſuch a lavv ſhall be eſtabliſhed, or a povver that Commandeth and giveth life and vigour to the lavves: Secondly, vvhether this povver be radically in themſelves or derived from the *King*. To the firſt I ſay that it is onely a power of aſſenting that ſuch or ſuch a law ſhall be eſtabliſhed; for it hath been reſolved by the judges that this clauſe vvhich he alleadgeth, *Be it enacted by the Kings moſt excellent Majeſty, and the authority of the Lords and Commons aſſembled in Parliament*, is no more in ſubſtance and effect then that vvhich vvas uſed anciently, *The King, with the aſſent of the Lords and Commons, eſtabliſheth*, the vvords *aſſenteth* and *enacteth* being equivalent in this caſe. And to the ſecond I ſay that their authority is derived from the *King*, not radically in themſelves; For although this Treatiſer knovvs nor, or vvil not ſeeme to knovv hovv to put a difference betvveen having an enacting authority, and having the Legiſlative au-

7.H.7.14. & 11.H.7.25.

Lambarts Archeion fol. 271.

thority radically in themſelves : yet the judges did, and the Statutes doe : For they may enact by a delegate authority, that is by having the uſe and exerciſe of the Legiſlative povver committed to them ſo farre as is neceſſary to that act, although it be not radically in them as their ovvne. But now the Treatiſer Speaketh not a vvord to either of theſe pointes, but ſheweth onely that they have an enacting authority, vvhich is a point not controverted. For their povver of aſſenting and laying the materialls of a lavv, is an enacting power, although their activity be not equall to the *K*ings; Subordinate Agents that are but Inſtruments of an other, and worke by a derived power, when they concurre vvith the principall and ſupreame Agent have their cauſality in producing the effect. And therefore vvhereas he demandeth vvhether *their conſent be cauſall and authoritative, or meerly conſiliary and unauthoritative?* I anſwer that it is as cauſall and authoritative as if the legiſlative povver vvere radically in themſelves, for he that vvorketh vvith an other mans tooles is as much the cauſe of the vvorke as if the tooles he uſeth were his ovvne; vvhether the authority by vvhich they enact be the *K*ings, or radically in themſelves, the effect vvill be the ſame. Novv I confeſſe it is not expreſſed in the clauſe that their *authority* is *derived* from the *K*ing, nor is it expreſſed to be *ſupreame*, but onely *authority* is attributed to them

them in generall tearmes, as it is alſo to the Juſtices, and other delegate and ſubordinate Miniſters in divers Statutes, neyther is it neceſſary or convenient that whereſoever the word *authority* is named, it ſhould be defined whether *Supreame* or *derived authority* be meant in that place, for it is expreſſely declared in divers Statutes that all *authority* is derived from the King, and it is not needfull it ſhould be declared in all.

It may be further objected that theſe wordes, *Be it enacted by the Kings moſt excellent Majeſty, and the authority of the Lords and Commons aſſembled in Parliament* do imply diſtinct authorities, the authority of the King and the authority of the Lordes and Commons; for the addition of theſe wordes, *And the authority of the Lords, and Commons*, is improper, if lawes be enacted by the Kings authority alone. To this I anſwer; firſt, that there is nothing more frequent when the King acteth jointly with his ſubordinate Miniſters, then to aſſcribe a concurrent authority to thoſe that act with him, although their authority be derived from his Majeſty: for although his authority can not be ſeperated from him *privativè* as hath been ſaid, yet *cumulativè* it may, that is, it may be inherent in his owne Perſon, and yet be in others too, as the light of the Sunne is inherent in its owne body, and yet multiplied and diffuſed through the world; Now when it is ſeparated from him after that manner, it is commonly called their

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authority to whom it is committed, becauſe they are the ſeat and ſubject of it. That light which the Starres derive from the Sunne is uſually called the light of the Starres, and the Starres are ſaid by the meanes thereof to concurre with the Sunne, and to have a cauſality and operation upon inferiour bodies; it is no impropriety to ſay, The light of the Sunne and the light of the Starres inlightneth all the vvorld, although the light of the Starres be derived from the Sunne. The judges have authority by the conſtitution of the Government to interpret a ſtatute jointly vvith the King, as vvell as the tvvo houſes have authority jointly vvith him to make it, ſo that the King can no more vvithout their aſſent and concurrence give an authenticall interpretation to a lavv, then he can make it vvithout the aſſent and concurrence of the other; the expoſition of a lavv muſt be made by the concurrent authority of them both, the authority of the King, and the the authority of the judges; yet no man hath hitherto affirmed the judges to be Supreame, or to have any other authority then what they derive from the King by Commiſſions, writs, letters patents, Statute, or preſcription. But ſecondly, what if it be granted that the Lords and Commons have authority of their owne diſtinct from the Kings authority? To ſpeake my owne opinion freely I think they have a diſtinct authority. I meane not Supreame authority, but an authority derived from the King, yet diſtinct from

from his. He that hath but a delegate power, if it be commited to him for tearme of years, tearme of life or perpetuity, he doth by ſuch a grant acquire an eſtate in the ſaid power, and an authority diſtinct from his that gave it him. As in an Eſtate of landes wherein a man hath a perpetuall right in fee ſimple, or in fee taile, his right is diſtinguiſhed from the Kings right of whom he houlds it, the King having the demeane of the *Land*, and the other the demeane of the *Fee*: ſo it is in an eſtate of power and authority; if the King granteth an eſtate of power, authority, and juriſdiction, in fee ſimple, or in fee taile, for tearme of years, tearme of life, or perpetuity, their rightes in the ſaid authority are diſtinct, the King hath the demeane of the *Power*, the orher the demeane of the *vſe*, the King hath *Dominium directum* the other *Dominium utile*. When one man hath power and authority to uſe an other mans power and authority, their authorities are apparently diſtinct. And this is the preſent caſe; the Legislative power is wholely and intirely the Kings, yet the Lordes and Commons have a perpetuall right in the uſe and exerciſe of ſome part thereof, ſo that the King can not actually make a law, except they will alſo uſe the authority committed to them, it being in their power to aſſent or not aſſent, to uſe or not to uſe, the ſayd authority. There is an authority then in the Lords and Commons diſtinct from the Kings authority which muſt neceſſarily be put forth

in the making of lawes, yet not ſupreame, but ſubordinate to the King, derived from him, and depending upon him. For their authority is not ſubſiſtent of it ſelfe, but dependeth upon the Kings authority, as the light in the Aire dependeth upon the light in the Sunne, as a ſhadow dependeth upon the ſubſtance, or an acceſſory upon the principall. But this is more then can be forced out of the foreſaid clauſe, and I thinke more then is intended in it.

3. Objection. *Thirdly, that Monarchy in which three eſtates are conſtituted to the end that the power of the one ſhould moderate and reſtraine from exceſſe the power of the other, is mixed in the roote and eſſence of it, but ſuch is this as is confeſſed in the anſwer to the ſaid propoſitions.*

The *Antecedent* and *conſequent* muſt both be denyed; The erection of Courtes, wherein the judges have authority to proceed according to law, notwithſtanding the perſonall and arbitrary Commands of the King, hath alwayes been eſteemed a ſtrong and effectuall means to reſtraine and moderate the exceſſes of Monarchie: Yet the judges can not be inferred from hence to be coordinate with the King in the rights of Soveraigntie, or to have a mixed power with him in the Government of the Kingdome. But the *conſequent* hath neyther apparence nor ſhadow of truth; Parliaments were ordained, that the other eſtates might conſult with the King about

about the weighty affaires of the Kingdome as often as he thought it needfull, and agree to ſuch lawes as ſhould be found profitable and expedient: not that they ſhould quarrell and conteſt with him. It is true the two houſes do for the moſt part in time of Parliament gaine an opportunity to have grievances redreſſed, becauſe they may otherwiſe deny the King the aſſiſtance he deſire, but they have no authority radically in themſelves to doe it; nor were they conſtituted for that end. If it ſhould be granted that Parliaments are by originall conſtitution and agreement, and that the People have alwayes given what lawes they pleaſed to the *Conqueror* as often as the Crowne hath been obteined by *conqueſt*; yet in probability they could have no ſuch end as this Treatiſer imagineth, or to abuſe the people, ſeemeth to imagine: had they purpoſed the three eſtates, ſhould moderate the exceſſes of one another in Parliaments, they would never have granted the King authority to diſſolve them at his pleaſure, whereby he might eaſily avoyd and fruſtrate their intention. Beſids Parliaments are ſo tempered as it is impoſſible to attaine to that end by ſuch a mixture; one of the eſtates, or any two of them, having no authority to make an act of Parliament without the third, which way can they moderate the exceſſes of one another by ſuch acts further then the exorbitant eſtate ſhall be willing to be moderated? Nor doth his Majeſty, as he imputeth to him, any where con-

feſſe that *three eſtates are conſtituted in this Monarchie to the end that the power of one ſhould moderate and reſtraine from exceſſe the power of the other*, I am ſure his Majeſtie ſaith not this *in terminis*, he ſhould therefore have cited his wordes, that the Reader might have judged of their ſence.

Theſe are the objections, brought by the authour of the Treatiſe of Monarchie which are partly taken out of the fuller Anſwerer, and partly invented by himſelfe. In anſwering them to avoyd needleſſe, Controverſies I have granted that a mixed forme of Governement is poſſible, although I be not ignorant that a mixed Government is but the invention of later times, and reputed impoſſible by authours of chiefeſt note. I have admitted alſo that the King, the Nobility, and Commons, are the three Eſtates of Parliament, although I know this contrary to the intention of the Statutes, wherin the three Eſtates of Parliament are declared to be the Cleargie, the Nobility, and the Commons. I have inſiſted the longer upon theſe objections becauſe the Authour of the foreſaid treatiſe is eſteemed by ſome the chiefe Advocate of that ſide. I intend not to derogate from the Authour, who I preſume would have written more ſubſtantially had the caſe been capable of defence; Yet if a man may geſſe at his humour by that treatiſe, he ſeemeth to be much more inclined to aſſert new principles, then to ſhew reaſons how they ſhould be maintained. That he might illude

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the lawes wherein the Government of England is declared Monarchicall, he laieth downe divers positions to this effect, that where a *transcendent intereſt*, or *primity of ſhare*, is in one man, it is ſufficient to conſtitute a Monarchie, although the other Eſtates have their ſhares alſo in the rightes of Soveraignty, and ſupreame authority; but he doth not ſo much as offer to prove this either by law, or reaſon, although it be contrary to the Common received principles of other authours, who teach that ſuch a *traſcendent intereſt* or *primity of ſhare* can not make a Monarch. For ſuch a *preheminence* is in ſome perſons in the moſt popular States, as in the Dukedomes of *Venice* and *Genua* where the Dukes have *a transcendent intereſt*, and *primity of ſhare*, above the reſt, and are *Rectores & executores ſummique magiſtratus*, having the gubernative, and executive power in their handes, and excelling all other in dignity and authority: Such preheminences therefore are reckened amongſt the *Simulacra Imperii Regii* being but images and ſhadowes of Kingly Government where full and intire power is wanting. Againe that he might illude the Lawes wherein the King is declared to be *Supreame*, he Saith that a *transcendent intereſt*, or *utmoſt Chiefty*, is ſufficient to make good that *title*; yet he endevoureth not to confirme this by one inſtance or example of law, although it be contrary to the received ſignification of the word when it hath reference to power and juriſdiction: for in law when a Governour or ruler is called *Supreame*

Part. 1. cap. 4

Beſold. Synopſ. Polit. doct. lib. 1. cap. 6. num. 4.

Clapmar. Dearcan. Rerump. tit. de ſimulacris Imperii cap. 3.

Vindication of the Treatiſe of Monarchie fol. 35.

preame, the word *Supreame* is alwayes oppoſed to *ſubordinate*, and not to *leſſe*: amongſt Lawyers he ſhall often finde power and juriſdiction divided into *Supreame* and *ſubordinate*, but never into *Supreame*, and *leſſe*, if that which is *leſſe* be alſo *Supreame*, and *independent*. Nor is this principle conſonant to that which he ſaith in other places; for if the Legiſlative power, which he ſaith in one of his objections is the height of power all the other partes being ſubſequent and ſubſervient thereunto, be jointly in the three Eſtates, how is the *Apex* and *culmen poteſtatis* in the King alone? how can he be denominated Supreame in his owne ſence by having the ſubſequent and ſubſervient partes of power? But yet if his new principles were granted to be true, he can not by ſuch ſhiftes in any plauſible manner evade the Statutes, wherein the King is declared to have intire, whole, and plenary power, and to be ſo ſupreame that all anthority is derived from him, and wherein it is declared that all obedience is due to him, and to him onely: vvill a tranſcendent intereſt make good all this? is a Primity of Share intire, vvhole and plenary povver? can all authority be derived from him that hath but an utmoſt chiefly? is all obedience due to one of the Eſtates, vvhere the mixture is in the povver it ſelfe, and ſupreame authority radically in the other? Surely if the other Eſtates have povver, alleagiance and obedience is due unto it; they had as good challenge no povver, as challenge no obedience.

CHAP.

CHAP. IX.

Divers generall objections taken from the teſtimony of his Majeſty, Bracton, *and* Forteſcue, *together with the preſidents of* Edward *the ſecond*, *and* Richard *the ſecond*, *anſwered.*

BEſids the former objections they urge the teſtimony of his *Majeſty*, of *Bracton*, and *Forteſcue*; to vvhich I anſvver in generall, that the deciſion of this controverſy depends upon lavv, and not upon the bare wordes and authority of any. The vvordes of Lavvyers are to be regarded no further then they are approved by lavv; for they are but men, and may be incited by paſſion or private

vate interest to speak or vvrit vvhat they ought not. I have therefore purposely my selfe omitted all prooses of that nature, and although I could produce a *catalogue* of Lavvyers longer then a *Genealogie* to confirme the Kings right, yet I have cited none but such as prove what they say by the lawes, except onely those that are cited by themselves, which I had also omitted, but that I desire to make it evident how farre those Authours are from favouring their seditious opinions. And if his *Majesty* out of a desire to avoyd the effusion of blood used such gracious expressions as vvere most likely to prevayle vvith the people, and consolidate their mindes, they ought not in equity to prejudice the rightes of the Crovvne, although he had abdicated therein some parte of his authority, and granted things destructive to his ovvne prerogative. I have given this generall answer not because his *Majesty*, *Bracton*, or *Forteseue* have affirmed any thing in favour of their right, but to shew the insufficiency of this objection in case they had; but the truth is they have notoriously perverted the meaning of his *Majesty*, as also the meaning of *Bracton* and *Forteseue*. And although I can not Imagine any man so senceless as to beleeve his *Majesty* ever subscribed to their judgement; or any that have perused the works of *Bracton* and *Forteseue* so voyd of understanding as to thinke they were ever abettors of such phantasies: yet that they may not exclaime for want of an

answer

anſwer I vvill more particularly examine vvhat they ſay.

Out of his *Majeſties* anſwer to the nineteene propoſitions they alledge this paſſage. *There being three kinds of Government amongſt men, abſolute Monarchy, Ariſtocracy, and Democracy, and all theſe having their particular conveniences and inconveniences, the experience and wiſdome of your Anceſtours, hath ſo moulded this out of a mixture of theſe, as to give to this Kingdome (as farre as humane prudence can provide) the conveniences of all three, without the inconveniences of any one, as long as the ballance hangs even between the three eſtates, and they run jointly on in their proper channell (begetting verdure and fertility, in the meddowes on both ſides and the overflowing of eyther, on eyther ſide raiſe no deluge or inundation); the ill of abſolute Monarchie is Tyranny; the ill of Ariſtocracie is faction and diviſion; the ills of Democracie are tumults, violence, and licenciouſneſſe. The good of Monarchie is the vniting a nation under one head, to reſiſt invaſion from abroad, and inſurrection at home; the good of Ariſtocracy is the conjunction of Councell in the ableſt perſons of a ſtate for the publik benefit; the good of Democracie is libertie and the courage and induſtry which libertie begets --- the Lords being truſted with a judicatory power, are an excellent ſcreen and banke between the prince and people --- by juſt judgements to preſerve the law, ſince --- therefore*

the power legally placed in both houſes is more then ſufficient to prevent and reſtraine the power of tyranny --- ſince to the power of puniſhing, which is already in your handes according to law. Thus farre, and in this manner, his *Majeſty* is cited by the fuller Anſwerer, who that he might the better wreſt his *Majeſties* Speeches to his owne purpoſe, hath made many tranſitions from one place to another, mutilating the ſence, and leaving out that which ſhould have made his *Majeſties* meaning apparent. And from theſe wordes he maketh divers *deductions*; his *firſt deduction* is, that his Majeſty granteth the Government of England to be mixed in the power it ſelfe, this he inferreth becauſe his Majeſty acknowledgeth a *mixture*, and it is no true mixture he ſaith, which *is not in the very ſupreamacy of power it ſelfe*; but this is anſwered in the former chapter: I ſhall here onely deſire the reader to take notice that his *Majeſties* true and reall intention is ſuch as I have their expounded; for theſe wordes, *The good of Monarchie is the uniting a Nation under one Head*, are a perfect Comentarie upon the former, and doe clearely manifeſt that his *Majeſty* aſſerted not the Head and ſeat of ſupreame power to be a mixed ſubject, but granted a Mixture in the adminiſtration of power alone. His *ſecond deduction* is that the *King* granteth the power of interpreting, and giving finall judgement of the ſence of law, to be in the two houſes, this he concludeth to be his Majeſties

Anſwer to Doctor *Firm* pag. 3.

Reply to Doctor *Firm* pag. 14.

jeſties meaning when he ſaith, *The Lords being truſted with a judicatory power, are an excellent ſcreen and banke between the King and People by juſt judgements to preſerve the law.* But this they may doe without having a power of interpretation and giving finall judgement of the ſence of law; It is ſufficient that they have a power to interpret law *judicially* in ſuch caſes as are cogniſcible in the court, when they are brought before them, although they have no power to interpret it *authoritatively*, and to rule all caſes as they pleaſe. This is a great Savegard to the people, and as convenient and fit a remedy againſt oppreſſion as humane prudence can provide, for a certaine and infallible remedy againſt all miſchiefs they can not have: if the two houſes had a power to declare what they would to be law, what ſcreen ſhould the people have againſt their oppreſſion? what bankes to hinder the irruption of their tyranny? whereas now they have a remedy by law againſt the evill inſtruments of the King, and may repaire their loſſes by a legall tryall, what remedy could they have againſt the miſimplyed agents of the houſes? Such a povver placed in them, vvould not make them a *Screen* or *banke* betvveen the Prince and people, but a *Rocke* and *precipice*, dangerous and fatall to them both; and vvould be as contrary to the true intereſt of the Kingdome, as the inference is to his *Majeſties* true intention. But the beſt of all is that he inferreth from the vvordes above

ſaid both the houſes to have a povver of declaring lavv, for vvhereas his *Majeſty* in the premiſſes ſpeaks onely of the houſe of Lords, by a trike of more then *Presbyterian Legerdemaine* he hath juggled the houſe of Commons into his inference. His *third deduction* is that his Majeſty granteth the tvvo houſes a povver of forcible reſiſtance in caſe they ſhould judge his actions tyrannicall and unjuſt; this he collecteth out of theſe vvords *ſince --therefore the power legally placed in both houſes is more then ſufficient to prevent and reſtraine the power of tyranny*. This he ſays can not be made good unleſſe the houſes have a povver of reſiſtance; for tyranny can not be othervviſe reſtrained. But it is evident that his Majeſty ſpeaks not in this place of a forcible, but of a legall vvay of reſtrainte; *Id poſſit quiſquam quod jure poſſit*, Every man is ſaid to have a povver to doe that vvhich he can doe by lavv, although he may be hindered in the execution of it. His Majeſty grants them not an abſolute povver of reſtraining tyranny, but let that be taken in vvhich goeth immediatly before, and his vvordes vvill beare no other ſence but that they have a povver of reſtraining it, ſo farre as humane prudence can by lavvfull and juſt vvayes provide: as for forcible reſiſtance his Majeſty knevv it to be againſt the lavv of God, and that to inveſt the pretended houſes vvith ſuch a povver, vvas not the vvay to pull dovvne, but to ſet up tyranny. Neyther is forcible reſi-

reſiſtance a more certaine means of reſtraining tyranny then other legall vvayes leſſe corraſive, if the houſes had a povver of reſiſtance, they are not ſure alvvayes to prevaile, a tyrant and his evill inſtruments may be able ſometimes to oppoſe them, and to hinder the execution of their povver: it is not convenient therefore they ſhould have ſuch a povver, it is better to tolerate a miſchiefe then to uſe a remedy vvhich is vvorſe then the diſeaſe, and uncertaine too. But they have by lavv a double povver as effectuall as forcible reſiſtance, they may inflict exemplary puniſhment upon evill inſtruments, vvhereby others may be affraid to take upon them ſuch imployments, and they may refuſe to give the *King* ſubſidies and other neceſſary aſſiſtance, if he refuſeth to moderate his exceſſes; If a tyrant and his evill inſtruments be ſtrong and in no neceſſity, vvere it lavvfull to reſiſt and to levy vvarre againſt them, the ſucceſſe vvould be doubtfull, the damage certaine: and if the beſt happen they ſhould but cure the commonvvealth of an *Ague* by giving if the *Plauge*; but if he be neceſſitated either by inſurrections, or othervviſe, to crave the aſſiſtance of his ſubjects, they ſhall then have liberty to execute their povver upon his evill inſtruments, or to make uſe of any other means the lavv hath put into their handes. Where tyranny reignes ſuch opportunities vvill in a ſhort time aſſuredly be offered; the beſt Princes can not alvvayes ſuppreſſe rebellions

by the helpe of their loyall ſubjects, how much leſſe can tyrants be able to do it without them. Such exigencies being conſidered, I ſay the power legally placed in the houſes is more then ſufficient to reſtraine tyranny, without a power of reſiſtance.

*Objection. Secondly they alleadge the teſtimony of Bracton. *Rex habet ſuperiorem Deum. S. item legem per quam factus eſt Rex, item curiam ſuam videlicet Comites, Barones*, that is, *The King hath God, the law, and his Court of Earles and Barons ſuperiour to him.*

Lib. 2 cap. 16.

*Reply. Themſelves will not admit the houſe of Lords alone to be ſuperiour to the King, and yet theſe words can have reference to no other; for the houſe of Commons conſiſts not of Earles and Barons, neyther are they a court of judicature. It is otherwiſe alſo evident that *Bractons* ſcope and meaning can not be ſuch as they would faſten on him, who, when he ſpeaketh of this ſubject, doth every where reſolve the contrary, whereof the places above cited are ſufficient inſtances. The wordes therefore can not relate to a legall ſuperiority over the perſon of the King, but to a morall ſuperiority over his conſcience, and they imply onely that the King in governing the people hath God, the law, and the houſe of Earles and Barons morally above him, by whoſe admonitions and judgements, ſo farre as they are legall, he ought in conſcience to be ſwayed. I well ſet downe the whole

whole and intire Period, with that which immediatly before hath reference to it, and let the Reader Judge of the ſence. *Nec factum Regis nec chartam poteſt quis judicare, ita quod factum Domini Regis irritetur. Sed dicere poterit quis, quod Rex juſtitiam fecerit, & bene, & ſi hoc eadem ratione quod male, & ita imponere ei quod injuriam emendet, ne incidat Rex & juſtic. in judicium viventis Dei propter injuriam Rex autem habet ſuperiorem Deum. S. item legem per quam factus eſt Rex, item Curiam ſuam, videlicet Comites, Barones, quia Comites dicuntur quaſi Socii Regis, & qui habet ſocium habet Magiſtrum, & ideo ſi Rex fuerit ſine fræno. 1. ſine lege, debent ei frænum ponere.* If theſe wordes be well conſidered it will be cleare that nothing but a morall ſuperiority can here be underſtood; firſt, he ſaith that no man hath authority to judge of the Kings fact, or of his Charter, *Nec factum Regis nec Chartam poteſt quis judicare.* This can not ſtand with a legall ſuperiority; if the Earles and Barons can not judge of the Kings fact, or of his charter, they can not have a legall ſuperiority over him. Secondly, he ſaith ſome notwithſtanding, in caſe juſtice be not duely adminiſtred, may advertiſe him thereof, and admoniſh him to reforme his errours, *Sed dicere poterit quis quod Rex juſticiam fecerit, & bene, & ſi hoc, eadem ratione quod male, & ita imponere ei quod injuriam emendet.* thirdly he ſheweth that the Earles and Barons in Parliament have this authority, who, if they

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ſee him breake out into violent and illegall Courſes, ought to put a bridle of the law upon him, *Rex autem habet ſuperiorem Deum. & item legem per quam factus eſt Rex, item Curiam ſuam videlicet Comites & Barones*, &c. But the whole tenour and effect of the wordes import that they ought to put upon him a bridle of law by faire and gentill meanes, as by admonitions, advertiſments, councell, or any ſuch other way as the law preſcribs, and not like judges by force and compulſion. Fourthly, he ſaith *the King hath God his ſuperiour, and the law, and the Earles and Barons in his court*: he maketh no diſtinction of ſuperiority, but calleth them all ſuperiour after the ſame manner, now it is evident that God doth not exerciſe a legall ſuperiority over Kings, and that the law being inanimate can not; both of them have onely a morall influence upon their conſciences, and therefore thoſe words muſt be interpreted onely of a morall ſuperiority. It is true after his death God ſhall diſpoſe of him as his judge, but *Bracton* in thiſe place ſpeaketh of giving preſent judgement upon his fact and upon his patents, according to humane lawes, which how illegall ſoever can not be judged by any: yet he ſaith God, the law, and the Earles and Barons in his court are Morally above him, by whoſe counſels and admonitions he ought to amend his exceſſes. Fiftly he giveth this reaſon why they are his ſuperiours *becauſe they are his Companions, and he that hath a Companion hath a maſter,*

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this is true of a *Morall Maſter* but not of a *Legall*; all *Companions* can not *Legally* be one anothers *Maſters*, but Morally they may. The vvhole coherence of the vvords, but eſpecially this reaſon doth make it cleare that they are meant of a Morall ſuperiority, ſo that if the whole period be taken in, this paſſage of *Bracton* maketh not for them, but againſt them.

Thirdly they alleadge the teſtimony of *Forteſcue*, who ſpeaking of the King of *England*, ſaith, *Principatu ne dum Regali ſed & Politico ſuo populo dominatur.* That is, *He governeth his people not onely by Kingly, but alſo by politique power.*

Forteſcue implyeth in theſe wordes that the King ought not to make his will, but the lawes the rule of his power; not that others are coordinate with him in the rights of Soveraigntie. For *Imperium* is eyther *Deſpoticum* or *Politicum*; *Deſpoticall* or *Kingly power* is an arbitrary and unlimited power, not reſtrained by humane lawes and conſtitutions; *Politique power* is a limited povver, reſtrained and moderated by humane and politique lavves. Novv *Forteſcue* ſaith that the Kings *power* is not meerly *Deſpoticall* and *Regall*, but *Politique* and tempered by law; and his intention is to ſhew the difference between the common lawes of England, and the civill law; by the civill lawes the Emperour after the power was tranſlated to him from the Commonwealth by that law which in the *Digeſt* is called *lex*

regia, untill the custome of making lawes by the assent of the people tooke place againe, might Command what he pleased, *Quod Principi placet legis habet potestatem*, is a part of that lavv; but the King of England, he saith, can not altogether govern his people by such a power, but is obliged to rule them according to the tenour of the *politique* lawes and constitutions of the Kingdome. But how doth this concerne the case in hand?

4. Objection. Fourthly they alleadge Presidents; *Parliaments* saith Mr. Prinne, *have exercised a supreame power over the Crowne of England it selfe, to transferre it from the right Heire, and setled it upon whome themselves thought meet to elect for their King.* He citeth two Kings which were deposed, *Edward* the second, and *Richard* the second, and then concludeth that *those Parliaments which have exercised such jurisdiction over them must certainely be above them, and the highest Soveraigne power.*

Reply. The *deposition* of those Kings hath been resolved *treason* by all the Iudges of *England*; and yet if it had been legall, the Presidents are impertinent, for those acts were confirmed by the Kings themselves, and could never have been esteemed acts of Parliament without their owne assent.

Coke instit part. 2. tit. treason.

CHAP.

CHAP. X.

Objections made againſt the Kings ſupreamacy in Particular, by Mr. Bridge, *the* reverent Divines, *and* Others, *anſwered.*

THey have yet other objections whereby they endeavour to prove that the Particular rightes of Soveraigntie are divided from the King and placed in the two houſes. And firſt touching the *Militia*, Mr. *Bridge* and the *reverent Divines*, have founde a device how the two houſes may make uſe of *that*, and levy vvarre againſt the King by his owne authority. They ſay as judges they may ſend out *Meſſengers* or *Sergeants at armes* for his evill counſellours, and in caſe they

refuse to appeare before them, fetch them in as delinquents by force of armes; this is the summe of their objection, but I will set it downe in their owne tearmes. 3. Objection. *Suppose*, saith Mr. Bridge, *a man be complained of to the Parliament for some notorious crime, it is granted by all that the Parliament hath a power to send a* Sergeant at armes *for him, and if he refuse to come that Sergeant at armes hath a power to call more and if the Delinquent shall rayse twenty or thirty or an hundred men to reskue him, then the Parliament hath power to send downe more* Messengers *by force to bring up the Delinquent, and if they may rayse an hundred, why may they not upon the like occasion rayse a thousand and so ten thousand?* And againe in his answer to Doctor *Ferns* reply. *If the Parliament may send one* Sergeant at armes, *then 20 then an hundred then a housand.* This I confesse is a very acute invention, for there can be by law but thirty *Sergeants at armes* at the same time within the Realme; novv if Mr. *Bridge* can shew the two houses a way how out of thirty *Sergeants at armes* they may rayse an army of a thousand, or ten thousand, his invention will be worthy to be applauded. 13. R. 2. cap 6. The *reverent Divines* have in substance the same objection saving onely they are not so punctuall for point of lavv as to have their army consist of *Sergeants at armes*; and they alleadge a case in law to justify that way of proceeding. *Supposing*, say they, *the power of calling and dissolving Parliaments wholly in the King ordina-*

dinarily; yet there may be ſuch power in them ſo long as they do ſit to command armes to be rayſed for the ſuppreſſing of any delinquents, maintaining themſelves with armes even under the colour of the Kinges authority, which I thuſe make good. If there be any ſuch kinde of power in the very judges in their courtes at Weſtminſter, for the whole Kingdome, and in their ſeverall circuits for the ſhires they ſit in, although themſelves are made judges at the Kinges will meerly, and put out ordinarily at his pleaſure, and they can neyther keepe aſſizes at any time, nor keepe any tearme any where, but when and ſo longe as the King pleaſes to give commiſſion: If (I ſay) there be ſuch a power in the judges and even in one of them then much more in the whole Parliament, which is unqueſtionably and undoubtedly the higheſt judicature in the Kingdome, and hath moſt power during their ſitting, now that ſuch a kinde of power is in the Iudges I appeale to experience in the caſe followinge. A privat man hath a ſuite with the King about lande or houſe and the like, the Kinge hath poſſeſſion and ſome officer or tenant of his holds it for the Kinge, the judges having heard the cauſe give ſentence for the ſubject, ad judge him to have the poſſeſſion delivered him by the Kinges tenant or officer; he refuſes and armes himſelf to keepe poſſeſſion ſtill upon thiſe, after due ſummons and proceſſe of law a write of rebellion ſhall goe out againſt the officer of the Kinges even though he ſhould pretend to keepe poſſeſſion ſtill by a command

and warrant from the King and the Sheriffe ſhall be commanded to rayſe armes even the whole poſſe Comitatus *if need be to expell this officer of the Kinges and bring him to condigne puniſhment for reſiſtinge the Kings authority in his lawes. Here now is rayſinge of armes by the Kings legall authority, againſt the Kings title, and the Kings officer notwithſtanding any pretended authority from the Kinges perſonall command, and that officer hath a writ of rebellion ſent againſt him, and ſhall be puniſhed by law, for offering to reſiſt the law upon any pretence (aſke the lawers whether in ſence this be not the law, and ordinarily praktiſed, ſave that the Kinge do not commande the contrary, but whether that would hinder law or not?) the Parliament may then in caſe of neceſſity rayſe armes againſt the Kings perſonall command for the generall ſafty and keeping poſſeſſion (which is more neceſſary then the hope of regaining) of the houſes, landes, goodes, liberties, lives, religion and all, and this by the Kings legall authority, and the reſiſters of this are the Rebells in the lawes account, and not the inſtruments ſo imployed legally, though with armes by the Parliament.*

Reply. For matter of fact, it was themſelves that withheld Delinquents from a legall tryall, the King detained none; but when divers members of the Parliament were aſſaulted in the ſtreets, driven from the houſe, defamed by libells, and juſtice not permitted to take place, it was the office of the King to protect them

them in their rights and liberties, and to force the due execution of the lawes: and if he refuſed to yeald up thoſe to their injuſtice which aſſiſted him, this vvas not to keep Delinquents from their tryall, but to protect his loyall ſubjects according to lavv; this for matter of fact. But for matter of right, ſuppoſe the King had taken up armes unjuſtly, the lavv doth not permit his courtes to oppoſe him, or to call any in queſtion that are aſſiſtant to him: vvhen the King taketh up armes they vvhich attend upon his perſon, or are imployed in other places about the ſame ſervice, may not be moleſted or troubled by proceſſe of lavv, or ſuffer any loſſe and dammage in their eſtates for it, eyther by act of Parliament, or otherwiſe. As for their objection it is ſo full of erronious paſſages and miſtakes that I muſt let moſt of them goe untouched; firſt, they aſſume the two houſes to be the vvhole Parliament; Secondly, they aſſume them to be a court of judicature; thirdly they aſſume the judges to have a povver of ſuppreſſing any delinquents, and maintaining themſelves by armes: The tvvo former aſſumptions are abſolutely falſe, and the latter true onely in ſome caſes, ſo farre as they have order of lavv; and no man deny ſuch a povver to be in the two houſes they may force delinquents to appeare before them in ſuch caſes, and in ſuch a manner as the lavv hath provided; for vvhat is ſo done is done by the Kings authority, vvhoſe commands in lavv are to be obeyed

11. H. 7. cap. 1.

obeyed before his perſonall commands. But they muſt proceed no further, nor after any other manner then the King commands in lavv; neyther they, nor the judges, can make vvhat ordinances they pleaſe to rayſe armes, or imploy their owne inſtruments to bring in delinquents, but muſt proceed according to order of law, and commit the whole carriage of the buiſineſſe to ſuch of the *King* officers as are appointed for that purpoſe, which are chiefly the high *Sheriffs* of counties, who are alſo confined by law, and may not exceed their commiſſion. For both in the caſe put by the *reverent Divines*, and alſo in all caſes whatſoever, if Delinquents grow ſo ſtrong that they be able to reſiſt the *poſſe Commitatus*, and can not be ſuppreſſed but by a warre, and by the *Militia* of the *Kingdom*, the *Sheriffe* ought then to certify the court thereof, and the proſecution of the matter muſt be left to the King, to whom onely it is reſerved to preſerve the peace of the *Kingdome* in ſuch caſes.

2. Objection. Secondly they urge the oath taken by the *King* at his coronation againſt his *Negative voyce*, vvhereby they ſay he is bound to give his aſſent to all bills offered him by the Lordes and Commons. The pretended houſes in one of their *Declarations* have ſet dovvne a forme in Latine vvhich they ſay vvas anciently uſed, and ought novv to be taken, *concedis juſtas leges & conſuetudines eſſe tenendas, & promittis pro te eas eſſe*

eſſe protegendas, & ad honorem Dei coroborandas, quas vulgus elegerit, ſecundum vires tuas

Reſpondebit, Concedo, & promitto

The word *Elegerit* they ſay may and ought to be taken in the *future tenſe*, and doth oblige the King to agree to all acts that ſhall be thought convenient by the Commons.

If their gloſſe upon the ſaid oath were authenticall, yet an other forme hath been long in uſe, whereof there are divers *Preſidents* upon *Record*, wherein the King is ſworne to uphould and maintaine the lavves and cuſtomes onely that are actually then in uſe when he taketh the ſaid oath, not ſuch as ſhall be offered him by the houſes. The oath taken by his Majeſty was this. Reply.

BISHOPE. *Sir will you grant to hould and keepe the lavves and right full cuſtomes, vvhich the commonalty of this your Kingdoms have, and vvill you defend and uphould them, to the honour of God ſo much as in you lyeth*

KING. *I grant and promiſe ſo to doe*

If it vvere the cuſtome anciently to take ſuch an oath as they alleadge, that cuſtome is now abrogated and other formes are upon record, vvhich have been taken ſucceſſively by many Kings together, and ought now to take place. Let not the Commons if they love their ovvne intereſt plead to have all ancient cuſtomes revived. But ſecondly I ſay, that there was never ſuch a cuſtome;

In the time of Henry the third the Kings oath conteined onely theſe three things. 1. *Se eſſe præcepturum, & pro viribus opem impenſurum ut Eccleſiæ Dei & omni populo Chriſtiano vera pax, omni ſuo tempore obſervetur*, 2. *ut rapacitates & omnes iniquitates, omnibus gradibus interdicat*, 3. *ut in omnibus judiciis æquitatem præcipiat & miſericordiam*. Common practice doth alſo diſprove ſuch a cuſtome; Kings have alwayes refuſed what bills they would, yet breach of oath was never objected againſt them untill theſe times. Now if the houſes could ſhevv (which I beleeve they can not) that divers Kings have taken the foreſaid oath, or any other bearing ſuch a ſence as they impoſe upon it, that is not ſufficient to prove a cuſtome ſeeing the practiſe was formerly, and is at the preſent otherwiſe. Thirdly if it be granted them that the ſayd forme ought novv to be uſed, yet it vvill not admit of ſuch an interpretation as they have given it; the vvorde *Lawes* in the oath can not be underſtood of thoſe lavves vvhich ſhall afterwards be offered the King by the tvvo houſes in Parliament, for that clauſe, *quas vulgus elegerit*, can not be applied to the houſe of Lords. Fourthly let it be yet further granted that the above ſaid forme ought to be taken, and that the ſence of it is ſuch as they interpret, yet they bind him not to aſſent to all lawes, but onely to thoſe that are juſt, and ſo farre he is bound in conſcience to aſſent without an oath, and to that end he is aſſiſted in Parliament

Bracton lib. 3. cap 9.

liament by his juſtices, and councell at lavv, vvho ought to in forme him, where he wanteth information, what are the rightes of the Crowne, vvhat the liberties of the people, that ſo he might be the better able to determine what is fit to be paſſed, and what is fit to be denyed.

Thirdly ſome inferre that the King hath not a povver of diſſenting, from the uſuall anſwer vvhich he giveth vvhen he refuſeth to paſſe a bill, *Le Roy s' adviſera*, wherin they ſay *he doth not peremptorily deny his aſſent, but onely craveth time to deliberate upon it.* 3. Objection

To vvhat purpoſe ſhould he crave time to deliberate about that which can not be avoyded, there is no conſultation to be uſed *de neceſſariis*. Yet he may anſwer otherwiſe if he pleaſe, [a] *Roy ne veult*, or [b] il *ne plaiſt*, are uſuall formes as vvell as that. Reply.

[a] Iudge Ienkins fol. 32.
[b] Hollinſh. vol. 1. fol. 180

Fourthly they alleadge Preſidents, *The Militia, and the chiefe officers of the Kingdome*, they ſay, *have been diſpoſed of in Parliament.*

If I ſhould give a Particular anſvver to all their *Preſidents* I ſhould weary the Reader with ſuch impertinencies; ſometimes they alleadge a ſeditious ſpeech of ſome of the Members for an act of Parliament; ſometimes they ſay ſuch or ſuch a thing was done by act of Parliament, and cite an Authour in the Margent, whereas no ſuch thing is to be found in the ſaid Authour; Sometimes they urge a *Preſident* where in the houſes denied to give the King Reply.

ſuch ſubſidies and aſſiſtance, as he required to his warres, becauſe the ſaid warres were undertaken vvithout their aſſent, and conclude from thence that the povver of making warre and treating with forraine ſtates belong to the tvvo houſes, vvhen the reaſon of their denyall vvas the miſcarriages of the vvarre, and the miſimployment of former ſubſidies, not that they challenged the power of making warre or treating vvith forraine ſtates to pertaine unto them. But ſuppoſing all that they ſay true, and all their *Preſidents* pertinent, I ſhall make theſe tvvo generall anſvvers; firſt, I ſay, that if the King, as in conſcience he vvas bound, did at the requeſt of the houſes diſcharge divers corrupt officers, and ſubſtitute others into their places, or if upon juſt reaſons and motives in the vacancy of an office he diſpoſed of it by the aſſent and approbation of the two houſes, or ordered his warre by their advice and direction, this doth not argue them to have a right in the election of the ſaid officers, or that the carriage and conduct of the warre depended upon their aſſent: if the King at any time hath given vvay to their deſires it vvas a voluntary and free act of grace, not an obligation of law. Secondly, I ſay, that if ſuch a right as is pretended vvere placed in them by act of Parliament, ſuch acts by the common lavv of the land were voyd, for the rights of the Crowne are ſetled upon it by the fundamentall lavves, as hath been ſhewed, and can not be ſeparated by act of Parliament.

ment. Theſe are all the objections vvhich could vvithout violence be referred to this place; The reſt which depende not upon lavv ſhall be anſvvered in the other queſtions, if any thing be omitted that ſeemeth to juſtify their cauſe, let any man undertake to anſwer me, and give me notice of it, and I donbt not but I ſhall be able, through the aſſiſtance of God, to make a full and ſatisfactory reply unto him. And this I ſhall deſire of my Adverſary, that vvhen he maketh uſe of any authority he vvould cite the wordes at large, as I my ſelfe have done in all materiall pointes, and not make references onely in the Margent, that the Reader may judge of the ſcope and intention thereof, and be able to diſcerne which of us dealeth faithfully, and which of us ingaged by faction ſtrive to illude the lawes, and wreſt them from their genuine and native ſence.

And thuſe by the *Grace* and *Mercy* of God I have in part diſcharged my conſcience, being bound by all the bonds both of divine and humane lavves to oppoſe and withſtand, as farre I am able, the falſe doctrine, and principles, which *wolves* in *ſheeps cloathing* indeavour dayly to infuſe into mens minds. I ſhall eaſily avoyd, I preſume, the uſuall calumny incident to thoſe which write npon this ſubject, as namely, that under the pretext of promoting the Apoſtles doctrine of obedience, they intende by flattering Princes, to promote their ovvne private intereſt. I vvould to God the condition of his Majeſty and the

Kingdome vvere ſuch as they might have ſome colour to lay that imputation upon me. But I am not ignorant that I might Sooner have advanced my owne intereſt by adoring the *pretended Parliament*, vvho diſpoſe of all mens eſtates and fortunes at their pleaſure, pretending as much right to all his Majeſties Kingdomes, and to all the povver and glory thereof, as the *Divell* did to all the Kingdomes in the world. *For that*, ſay the Members, *is delivered unto us, and to vvhomeſoever we will, we give it*, And I know they uſe to diſtribute their favours liberally to thoſe that will *fall downe and vvorſhipe them*. But how poore ſoever my condition is, I have no inclination to buy my intereſt at ſo deare a rate; I had rather periſh in the performance of my duty then be confederate to their Sacriledge, and other Impieties, or not render my country that ſervice which I owe it, for whoſe liberty I would willingly Sacrifice not onely my owne intereſt, but my life. I ſhould be no good *Engliſh man* if I did not deſire a better ſubject to diſcourſe upon then the miſeries of the Kingdome, and if by being ſilent and turning away mine eyes, I could help to quench the flame that audatious and factious Spirits have Kindled in it, I ſhould have abſtained from writing at this time: But the danger and miſerable condition of the Commonwealth calls for action to all thoſe, which had not rather ſee all thinges managed according to the appetite of thoſe *Incendiaries* and *Firebrands of ſedition*,

Luke 4. 6.

dition, then hazard themselves and their owne interest for the rights and liberties of the Kingdome. I could wish that all whome it concerns would seriously consider, that the fatte and riches of the land was the patrimony and Inheritance of their *Ancestours*, and may be of their *Posterity*, if their owne feares and negligence give it not to their enimies. I could wish also that the pretended Parliamentarians would seriously consider their owne condition, whome I esteeme of all men most miserable: To speake my *desires*, I wish unfainedly the Salvation of them all; but to speake my *thoughts*, I conceive more hopes of the honest *Heathen*, then of any man that shall dy a *Rebell*, or not make *Restitution* of all that he hath gained by oppression and injustice.

FINIS.

Soli Deo Gloria.

Glory to God alone)

Advice to young Gentlemen

Law suits avoid with as much studious care
As you would dens where hungry lions are
And rather put injuries than be
a Plague to him who'd be a plague to thee
Value your quiet at a price too great
For a revenge to give so dear a rate.